TO PROHIBIT DISCRIMINATION IN EMPLOYMENT BECAUSE OF RACE, CREED, COLOR, NATIONAL ORIGIN OR ANCESTRY

HEARINGS

BEFORE THE

COMMITTEE ON RULES
HOUSE OF REPRESENTATIVES

SEVENTY-NINTH CONGRESS

FIRST SESSION

ON

H. R. 2232

A BILL TO PROHIBIT DISCRIMINATION IN EMPLOYMENT BECAUSE OF RACE, CREED, COLOR, NATIONAL ORIGIN OR ANCESTRY

MARCH 8, APRIL 19, 20, 25, AND 26, 1945

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TO PROHIBIT DISCRIMINATION IN EMPLOYMENT BECAUSE OF RACE, CREED, COLOR, NATIONAL ORIGIN, OR ANCESTRY

THURSDAY, MARCH 8, 1945

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RULES,
Washington, D. C.

The committee this day met at 10:30 a. m., Hon. Adolph J. Sabath, chairman, presiding, for consideration of H. R. 2232, which reads as follows:

[H. R. 2232, Rept. No. 187, 79th Cong., 1st sess.]

A BILL To prohibit discrimination in employment because of race, creed, color, national origin, or ancestry

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fair Employment Practice Act".

FINDINGS AND DECLARATION OF POLICY

SEC. 2. (a) The Congress hereby finds—

(1) that the practice of discriminating in the matter of employment, and in matters relating thereto, against properly qualified persons because of their race, creed, color, national origin, or ancestry leads to domestic and industrial strife and unrest and forces large segments of the population permanently into substandard conditions of living, thereby creating a drain upon the resources of the Nation and a constant threat to the maintenance of industrial peace and of the standard of living necessary to the health, efficiency, and well-being of workers; and

(2) that the existence of such practices in industries engaged in commerce or in the production of goods for commerce causes the means and instrumentalities of commerce to be used to spread and perpetuate such conditions throughout the several States and causes diminution of employment and wages in such volume as substantially to impair and disrupt the market for goods in commerce, and burdens, hinders, and obstructs commerce.

(b) Individuals shall have the right to work without discrimination against them because of their race, creed, color, national origin, or ancestry.

(c) It is hereby declared to be the policy of the Congress to protect such right and to eliminate all such discriminations to the fullest extent permitted by the Constitution. This Act shall be construed to effectuate such policy.

DEFINITIONS

SEC. 3. As used in this Act—

(a) The term "person" means an individual, partnership, association, corporation, legal representative, trustee, trustee in bankruptcy, receiver, or any organized group of persons, and includes any agency or instrumentality of the United States or of any Territory or possession thereof.

(b) The term "employer" means a person having in his employ six or more individuals, or any other person acting in the interest of such an employer, directly or indirectly.

(c) The term "labor union" means any organization, having six or more members, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, or terms or conditions of employment.

(d) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States; or between any State or Territory, or the District of Columbia, and any place outside thereof; or within the District of Columbia or any Territory; or between points in the same State but through any point outside thereof.

(e) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

(f) The term "Commission" means the Fair Employment Practice Commission created by section 6.

RIGHT TO FREEDOM FROM DISCRIMINATION IN EMPLOYMENT

SEC. 4. The right to work and to seek work without discrimination because of race, creed, color, national origin, or ancestry is declared to be an immunity of all citizens of the United States, which shall not be abridged by any State or by an instrumentality or creature of the United States or of any State.

UNFAIR EMPLOYMENT PRACTICES DEFINED

SEC. 5. (a) It shall be an unfair employment practice for the purposes of this Act for any employer—

(1) to refuse to hire any individual because of such individual's race, creed, color, national origin, or ancestry;

(2) to discharge any individual from employment because of such individual's race, creed, color, national origin, or ancestry;

(3) to discriminate against any individual in the matter of compensation with respect to, or in other terms or conditions of, employment because of such individual's race, creed, color, national origin, or ancestry; or

(4) to confine or limit recruitment or hiring of individuals for employment to any employment agency, placement service, training school or center, labor union or organization, or any other source that discriminates against individuals because of their race, color, creed, national origin, or ancestry.

(b) It shall be an unfair employment practice for the purposes of this Act for any labor union—

(1) to deny full membership rights and privileges to any individual because of such individual's race, creed, color, national origin, or ancestry;

(2) to expel from membership any individual because of such individual's race, creed, color, national origin, or ancestry; or

(3) to discriminate against any member, employer, employee, or individual seeking employment, because of his race, creed, color, national origin, or ancestry.

(c) It shall be unfair employment practice for the purposes of this Act for any employer or labor union to discharge, expel, or otherwise discriminate against any person because such person has opposed any practice which constitutes an unfair employment practice under this Act or has filed a charge, testified, or assisted in any proceeding under this Act.

FAIR EMPLOYMENT PRACTICE COMMISSION

SEC. 6. (a) For the purpose of securing enforcement of the foregoing rights and preventing unfair employment practices, there is hereby created a commission to be known as the Fair Employment Practice Commission, which shall be composed of five members who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as chairman of the Commission. Any member of the Commission may be removed by the President upon notice and hearing for neglect of duty or malfeasance in office, but for no other use.

(b) A vacancy in the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission and three members of the Commission shall at all times constitute a quorum.

(c) The Commission shall have an official seal which shall be judicially noticed.

(d) The Commission shall at the close of each fiscal year report to the Congress and to the President concerning the cases it has heard, the decisions it has rendered,

the names, salaries, and duties of all employees and officers in its employ or under its supervision, and an account of all moneys it has disbursed, and shall make such further reports on the cause of, and means of alleviating discrimination, and such recommendations for further legislation as may appear desirable.

(e) Each member of the Commission shall receive a salary at the rate of $10,000 a year, and shall not engage in any other business, vocation, or employment.

(f) When three members of the Commission have qualified and taken office, the Committee on Fair Employment Practice established by Executive Order Numbered 9346 of May 27, 1943, shall cease to exist. All employees of the said Committee shall then be transferred to and become employees of the Commission, and all records, papers, and property of the Committee shall then pass into the possession of the Commission.

(g) The principal office of the Commission shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place and may establish such regional offices as it deems necessary. The Commission may, by one or more of its members or by such agents or agencies as it may designate, conduct any investigation, proceeding, or hearing necessary to its functions in any part of the United States.

(h) The Commission shall have power—

(1) to appoint such officers and employees as it deems necessary to assist it in the performance of its functions;

(2) to cooperate with or utilize regional, State, local, and other agencies and to utilize voluntary and uncompensated services;

(3) to pay to witnesses whose depositions are taken or who are summoned before the Commission or any of its agents or agencies the same witness and mileage fees as are paid to witnesses in the courts of the United States;

(4) to furnish to persons subject to this Act such technical assistance as they may request to further their compliance with this Act or any order issued thereunder; and

(5) to make such technical studies as are appropriate to effectuate the purposes and policies of this Act and to make the results of such studies available to interested Government and nongovernmental agencies.

PREVENTION OF UNFAIR EMPLOYMENT PRACTICES

SEC. 7. (a) The Commission is empowered, as provided in this section—

(1) to prevent unfair employment practices by employers affecting commerce;

(2) to prevent unfair employment practices by employers who are parties to contracts with the United States or any Territory or possession thereof, or with any agency or instrumentality of any of the foregoing, and by employers performing, pursuant to subcontract or otherwise, any work required for the performance of any such contract;

(3) to prevent unfair employment practices by agencies and instrumentalities of the United States, and of the Territories and possessions thereof; and

(4) to prevent unfair employment practices by labor unions affecting commerce.

(b) Whenever it is alleged that any person has engaged in any such unfair employment practice, the Commission, or any referee, agent, or agency designated by the Commission for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect and containing a notice of hearing before the Commission or a member thereof, or before a designated referee, agent, or agency at a place therein fixed not less than ten days after the serving of said complaint.

(c) The person so complained of shall have the right to file an answer to such complaint and to appear in person or otherwise, with or without counsel, and give testimony at the place and time fixed in the complaint.

(d) If upon the record, including all the testimony taken, the Commission shall find that any person named in the complaint has engaged in any such unfair employment practice, the Commission shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair employment practice and to take such affirmative action, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this Act. If upon the record, including all the testimony taken, the Commission shall find that no person named in the complaint has engaged in any such unfair employment practice, the Commission shall state its findings of fact and shall issue an order dismissing the said complaint.

JUDICIAL REVIEW

SEC. 8. Except as provided in section 12 (relating to the enforcement of orders directed to Government agencies), orders of the Commission shall be subject to judicial enforcement and judicial review in the same manner, to the same extent, and subject to the same provisions of law, as in the case of orders of the National Labor Relations Board.

INVESTIGATORY POWERS

SEC. 9. (a) For the purpose of all investigations, proceedings, or hearings which the Commission deems necessary or proper for the exercise of the powers vested in it by this Act, the Commission, or its authorized agents or agencies, shall at all reasonable times have the right to examine or copy any evidence of any person being investigated or proceeded against relating to any such investigation, proceeding, or hearing.

(b) Any member of the Commission shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence relating to any investigation, proceeding, or hearing before the Commission, its member, agent, or agency conducting such investigation, proceeding, or hearing.

(c) Any member of the Commission, or any agent or agency designated by the Commission for such purposes, may administer oaths, examine witnesses, and receive evidence.

(d) Such attendance of witnesses and the production of such evidence may be required, from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(e) In the case of contumacy or refusal to obey a subpena issued to any person under this Act, any district court of the United States or the United States courts of any Territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the investigation, proceeding, or hearing is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Commission shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony relating to the investigation, proceeding, or hearing; any failure to obey such order of the court may be punished by it as a contempt thereof.

(f) No person shall be excused from attending and testifying or from producing documentary or other evidence in obedience to the subpena of the Commission, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

RULES AND REGULATIONS

SEC. 10. The Commission shall have authority from time to time to issue such regulations as it deems necessary to carry out the provisions of this Act, and to amend or rescind, from time to time, any such regulation whenever it deems such amendment or rescission necessary to carry out the provisions of this Act. If, within sixty days after the issuance of any such regulation or of an amendment to any such regulation, there is passed a concurrent resolution of the two Houses of the Congress stating in substance that Congress disapproves such regulation or amendment, as the case may be, such regulation or amendment, as the case may be, shall not be effective after the date of the passage of such concurrent resolution; and after the date of the passage of such concurrent resolution, no regulation or amendment having the same effect as that concerning which the concurrent resolution was passed shall be issued by the Commission.

Regulations issued under this section shall include the procedure for service and amendment of complaints, for intervention in proceedings before the Commission, for the taking of testimony and its reduction to writing, for the modification of the findings or orders prior to the filing of records in court, for the service and return of process, the qualification and disqualification of members and employees and any other matters appropriate in the execution of the provisions of this Act.

INCLUSION OF ANTIDISCRIMINATION CLAUSE IN GOVERNMENT CONTRACTS

SEC. 11. (a) Every contract to which the United States, or any Territory or possession thereof, or any agency or instrumentality of any of the foregoing, is a party (except such classes of contracts as the Commission may by regulation issued under section 10 exempt from the scope of this section) shall contain a provision under which—

(1) the contractor agrees that during the period required for the performance of the contract he will not engage in any unfair employment practices; and

(2) the contractor agrees that he will include a provision in each subcontract made by him for the performance of any work required for the performance of his contract a provision under which the subcontractor agrees—

(A) that during the period required for the performance of the subcontract, the subcontractor will not engage in any unfair employment practices; and

(B) that the subcontractor will include in each subcontract made by him provisions corresponding to those required in subparagraph (A) and this subparagraph.

(b) Unless the Commission shall otherwise direct, no contract shall be made by the United States, or any Territory or possession thereof, or any agency or instrumentality of any of the foregoing, with any person found pursuant to this Act to have engaged in any unfair employment practice, or with any corporation, partnership, association, or other organization, in which such person owns a controlling interest, for a period (to be fixed by the Commission) not to exceed one year from the date on which such practice was so found to have been engaged in. The Commission may, by subsequent order, for good cause shown reduce any period so fixed. The Comptroller General of the United States shall distribute to all agencies and instrumentalities of the United States, and to the appropriate officials in the Territories and possessions of the United States, lists containing the names of such persons, corporations, partnerships, associations, and organizations.

ENFORCEMENT OF ORDERS DIRECTED TO GOVERNMENT AGENCIES

SEC. 12. The provisions of section 8 (providing for judicial enforcement and judicial review of orders of the Commission) shall not apply with respect to an order of the Commission under section 7 directed to any agency or instrumentality of the United States, or of any Territory or possession thereof. In the case of any such order, the Commission may request the President to take such action as he deems appropriate to secure compliance with such order, which may include the summary discharge of any officer or employee of any such agency or instrumentality who, in the opinion of the President or such person as the President may designate, has willfully failed to comply with such order.

WILLFUL INTERFERENCE WITH COMMISSION AGENTS

SEC. 13. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Commission or any of its referres, agents, or agencies, in the performance of duties pursuant to this Act, shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

SEPARABILITY CLAUSE

SEC. 14. If any provision of this Act or the application of such provision to any person or circumstance shall be held invalid, the remainder of such Act or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

STATEMENT OF HON. MARY T. NORTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

The CHAIRMAN. Mrs. Norton, we will hear you. I am sorry you have been delayed.

Mr. COLMER. Mr. Chairman, may I inquire what the witness is going to discuss?

The CHAIRMAN. Sir?

Mr. COLMER. May I inquire what bill we are going to take up now?
The CHAIRMAN. H. R. 2232.
Mr. COLMER. Is this the so-called FEPC, Mr. Chairman?
The CHAIRMAN. Yes.
Mr. COLMER. Mr. Chairman, I am just wondering. This is the first information I had that this matter was coming up this morning. I was just wondering about that. We did not receive the customary notices this morning, although I think it was announced we were going to consider this other matter at the last minute. You will pardon me, Mrs. Norton?
Mrs. NORTON. Certainly.
Mr. COLMER. But this is something that has never been mentioned here in this committee.
The CHAIRMAN. We had three different matters on this morning; namely, the one just concluded, the one of Mr. Sumners of Texas on his resolution, and also the resolution of the Foreign Affairs Committee relative to extending the time on the lend-lease.
Mr. COLMER. None of those were placed on the card that is usually mailed out in the customary manner about these meetings.
The CHAIRMAN. I do not know.
Mr. COLMER. If any of the other members received them I do not know.
The CHAIRMAN. Other members have asked me and I have said we can probably hear them.
Mr. COLMER. The time is getting a little late to consider this matter. It is going to take a lot of time.
The CHAIRMAN. Of course.
Mr. HOFFMAN. It is 20 minutes to 12. With the number of witnesses, will you have a further hearing?
The CHAIRMAN. Oh, yes.
Mr. HOFFMAN. When?
The CHAIRMAN. There is no intention to rush this through. It may take 2 half-days.
Mr. COLMER. I was just inquiring about that.
The CHAIRMAN. All right.
Mr. COLMER. I am just wondering if any good purpose could be served by taking this matter of such a highly controversial nature up at this hour, and of course it will be here a long time. And, frankly, I just want to make myself clear if I have not done it already. I resent the manner in which it was brought up here. If you gentlemen want to go ahead it is all right with me.
The CHAIRMAN. The complaint has been made that this committee never gets a chance before the Rules Committee, and I claimed that charge, of course, was not justified, and in view of the persistent request which has been made we are taking it up and will see how far we can get along with it with no intention of taking any action on it today.
Mr. COLMER. No, I can assure the Chair there will be no action on it today, and for that matter there will be no action taken for many days.
The CHAIRMAN. You may proceed Mrs. Norton.
Mrs. NORTON. Mr. Chairman, and members of the committee, I have been instructed by the Labor Committee to request a rule on H. R. 2232, which prohibits discrimination in employment because

of race, creed, color, national origin, or ancestry, so that this bill may be brought to the House for debate and we hope, adoption.

Thirteen similar bills have been considered by a subcomimttee, of which the Honorable Jennings Randolph served as chairman. As a result of this consideration the bill, H. R. 2232, was reported unanimously to the full committee and the committee voted with full consideration of H. R. 2232 and reported the bill to the House by an almost unanimous vote.

The necessity for this bill was established through hearings before the Labor Committee held during the Seventy-eighth Congress, following which a bill was reported to the House and a request made for a rule at that time. The request apparently was denied and the bill died with the Seventy-eighth Congress.

Following the national conventions of the two major parties, Democrat and Republican, at which both parties endorsed this legislation, the Presidential candidates of both parties pledged themselves to support a permanent Fair Employment Practice Commission.

Let it be clearly understood that this bill only—and I want to stress that—affects agencies of the Federal Government employees, of six or more persons whose operations affect interstate commerce, employers holding Federal contracts, and labor unions whose practices affect interstate commerce.

Mr. COX. Affects or substantially affects?

Mrs. NORTON. That is right.

The principal minority groups protected by the bill are 13,000,000 Negroes, 5,000,000 Jews, 20,000,000 Catholics, 3,000,000 Mexicans and about 11,000,000 persons of foreign birth.

We believe that this bill will do much to eliminate discrimination. We know that the Commission established by the President has, without sanctions and with a very small staff, succeeded in establishing the principle of freedom from discrimination. The Executive order of the President ends 6 months after hostilities cease. We believe unless we continue by law the principle of economic freedom we shall be faced with many very serious problems when this war ends. We cannot write a set of principles to serve in winning a war and refuse to accept them when peace comes.

The men and women serving in the armed forces are of all creeds, color, and national origin. Their service to their country is not predicated on color or ancestry or anything else other than that they are good Americans. They are Americans fighting for a common objective—freedom, in the broadest sense of the word. We have repeated over and over again that this war is being fought to preserve freedom in our own country and to extend it to the peoples of the world. If we are honest, and I believe we are, at least most of us, there remains one way to prove it, and that is to end discrimination in our own country.

It is for this purpose we are asking to grant a rule which will give the House an opportunity to debate this bill, and we feel when the bill has been debated fully that it will be passed without much dissent. It will be a step, and a first step, to prevent economic discrimination because of race, color, creed, or national origin.

That, gentlemen, is a very general presentation of what this committee has been trying to do.

Mr. HALLECK. Mrs. Norton, does this bill comprehend the bill recently passed by the State of New York?

Mrs. NORTON. It is practically the same kind of a bill.

Mr. BALDWIN. It is not as strict as the New York bill

Mr. HALLECK. It is not as strict as the New York bill?

Mrs. NORTON. I have not had a chance to go through the bill carefully. Perhaps you have, Mr. Baldwin.

Mr. BALDWIN. Is there not a similar bill in Massachusetts?

Mrs. NORTON. Is there a similar bill?

Mr. BALDWIN. Is not there a similar bill in Massachusetts?

Mrs. NORTON. Massachusetts, New Jersey, California, Pennsylvania, and several of the States; the State of Washington.

Mr. BALDWIN. About eight or nine States.

Mrs. NORTON. Mr. Chairman, there is a very great demand for this type of legislation.

Mr. COX. I wonder if there is behind this bill the urge to break down all racial distinction as far as possible, both social and economic?

Mrs. NORTON. No.

Mr. COX. And to make a complete melting pot out of the country?

Mrs. NORTON. Mr. Cox, it has nothing to do with social relations. It deals with economic relations.

Mr. Chairman, I would like to give some time to Mr. Randolph.

Mr. HOFFMAN. Mr. Chairman, inasmuch as I am the oldest witness I would like to ask the indulgence of the committee too and I wish to be heard as soon as possible.

Mr. SMITH of Virginia. I would like to ask a question if permissible.

The CHAIRMAN. Surely.

Mr. SMITH of Virginia. Mrs. Norton, some of us have been interested in the women's equal-rights amendment.

Mrs. NORTON. Yes, sir.

Mr. SMITH of Virginia. I notice this bill applies to race, color, creed, national origin, or ancestry. I am wondering if there would be any objection to including the word "sex"?

Mrs. NORTON. There would be no objection, but I think it is hardly necessary.

Mr. SMITH of Virginia. You mean you do not think there is any discrimination now between sexes? In other words, you think women are treated equally with men?

Mrs. NORTON. I think women are regarded as persons more than women.

Mr. SMITH of Virginia. I beg your pardon?

Mrs. NORTON. I think women are regarded as persons more than women. However, Mr. Smith; I have no objection to it at all.

Mr. SMITH of Virginia. You think it would be perfectly all right?

Mrs. NORTON. I think it would be perfectly all right; yes. I think the committee would feel the same way about it.

Mr. BALDWIN. This is all interstate and not State rights?

Mrs. NORTON. That is right.

Mr. BALDWIN. And pertains to Government agencies?

Mrs. NORTON. That is right.

Mr. HALLECK. It applies principally to Government agencies?

Mr. BALDWIN. It affects Government agencies.

Mr. BROWN. Yes.

Mrs. NORTON. Mr. Chairman, I yield to the gentleman from Michigan.

The CHAIRMAN. We will hear from Mr. Hoffman now.

STATEMENT OF HON. CLARE E. HOFFMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. HOFFMAN. Mr. Chairman, my concern at the moment is not with the action of the committee in either granting or refusing to grant a rule. If there is discrimination and if the purpose is to cure discrimination then the bill is not broad enough, and because it was not broad enough I introduced H. R. 1908 which includes all the factors because of which no one should be discriminated against, such as sex, as suggested by Judge Smith; that is, there shall be no discrimination because of race, creed, sex, color, and to cover white gentiles want of color should be included in any bill to be passed.

The bill contains a provision which places the enforcement of it in a commission.

While it was stated by the chairman of the committee that the Republican platform and the Republican candidate announced in favor of this legislation, and while that statement is true, the Republican platform and the Democratic platform contain provisions against the establishment of any additional bureaus and commissions.

Experience has demonstrated that in the administration and interpretation of the National Labor Relations Act the National Labor Relations Board has not been a fair agency. I express that not as my statement, but as the statements of William Green, president of the American Federation of Labor; Phil Murray, of the CIO; and John Lewis, of the United Mine Workers; all of whom are on record to the effect that the administration of the National Labor Relations Act by the National Labor Relations Board has been unfair, discriminatory, and unjust.

Hence, in the bill which I offered first, and which includes those two additional provisions, I would like a rule. I do not say I ask for a rule. I say it seems to me that if a rule should be granted it should make that bill and a subsequent bill, H. R. 2495, one bill, available as amendments or substitutes for H. R. 2232. The subsequent bill left out sex and color, so it would cover the same causes in the bill mentioned by the committee.

But the places for the interpretation and enforcement of the law are in our courts. We all realize that the Supreme Court has protected the rights of the citizens regardless of their race, creed, or color Many decisions show that. If a man is to have justice he should have the benefit of those skilled in the law and the judgment of his peers.

The penalties of this bill are severe. The bill requires the payment to an employee who alleges he has been discriminated against of back wages when ordered by this agency or through this agency which has been set up in the bill to be paid by the employer. The employer I think should be entitled to the judgment of a jury as to whether there has been discrimination.

So I ask a rule to permit these two bills to be offered as substitutes.

Mr. BALDWIN. Mr. Hoffman, if your bill is germane to this labor bill, is it not within your rights to offer that bill?

Mr. HOFFMAN. I am not an expert on parliamentary procedure or on the rules which might be involved.

I know those who are against discrimination because of sex will favor this bill and surely you do not want to discriminate against white gentiles.

Mr. HALLECK. Mr. Chairman, I would like to ask the gentleman from Michigan a question or two if I might.

The CHAIRMAN. Surely.

Mr. HALLECK. I have not had a chance to look this through. I suppose I should have, but I did not understand until late yesterday that even this was coming up today. Does this follow pretty much the precedent established as far as organization is concerned in the National Labor Relations Act?

Mr. HOFFMAN. It expressly states the procedure should be the same. And the gentleman inquiring of me was a member of the Smith committee and no doubt recalls where the examiner under that law went out and made an independent investigation where the employer is not permitted to examine the witness. The examiner wrote the opinion under the National Labor Relations Act. The opinion of the examiner in one case—she was a 29-year-old girl—became the opinion of the Board, it became the opinion of the circuit court of appeals, and it was adopted by the United States Supreme Court. It had nothing behind it except the judgment, if any, of that inexperienced girl. I know the gentleman from Virginia (Mr. Smith) knows all those facts. The Supreme Court opinion in that case as to the facts had nothing behind it except the opinion of that examiner.

Mr. HALLECK. Of course, I well recall my experience on that committee. My participation has brought me both bouquets and brickbats, but I do think that the hearings served to bring to light certain practices that fair-minded people generally could not stand for. That brings me to this: It not only is a fact that that committee conducted certain investigations of the administrative practices of the NLRB, but we also drafted certain amendments to the basic law which were presented to the House, and as I remember it were adopted by a vote of something like 2 to 1.

One of those amendments—my memory is not too good about them—had to do with the separation of the powers of prosecution from the powers of decision.

What does this bill provide in respect to that?

Mr. HOFFMAN. It provides that the procedure shall be the same as that followed by the National Labor Relations Board under the National Labor Relations Act.

I might call the attention of the committee to shis fact which appeared last night in the Washington Evening Star editorial where the WPB has ordered that employees at New Bedford, Mass., who refused to take jobs in the tire plant should not have jobs in any other industry. The court last week handed down a decision which said it was powerless to help them, the order of the WLB could not be reviewed. The result is she members of the union were thrown out of their jobs by orders of the WLB. They are prohibited from getting a job elseAhere.

If you want justice at least to my way of thinking better leave the enforcement of legislation to the courts rather than to some arbitrary board. It is catching labor now. In the Montgomery-Ward case it caught the employer. In this New Bedford case it caught the workers.

Mr. COLMER. I would like to ask the gentleman a question, Mr. Chairman, if I may.

The CHAIRMAN. All right.

Mr. COLMER. Mr. Hoffman, what is the purpose of this type of legislation? We have heard some statements about it. But what can be accomplished by trying to legislate on a matter of this sort? Is it not just another noble experiment?

Mr. HOFFMAN. I filed a minority report to H. R. 2232. I have read the hearings before the committee or subcommittee. I was present at very few hearings on the committee bill. I am familiar with the testimony before the Smith committee which had the same matter up in an indirect way. And, as I gather the facts, I found the objectives of this legislation are two. They propose to give certain races a better economic opportunity; and some of the witnesses also advocated the idea of social equality. Several of them testifying before the Smith committee so said. Then, I think, the other objective—that of some politicians is to corral the Negro vote. That is the real purpose, I think.

Mr. COLMER. Of course, I knew the gentleman could put his finger on the spot.

Mr. HOFFMAN. Perhaps I should withdraw my opinion. I am not judging other people's motives.

Mr. COLMER. If you withdraw it some of us might want to substitute it.

Mr. HOFFMAN. That is all right.

Mr. COLMER. So keep it in the record.

Mr. HOFFMAN. Then you can let it stand as perhaps of little value.

I know what you are trying to do. You are trying to draw me out on an opinion that might cost my party some votes. I do not believe you can legislate social reforms.

Mr. COLMER. You do not have an opinion your party may profit by advocating such legislation do you?

Mr. HOFFMAN. Personally I do not know. The master minds in my party might think that.

Mr. JOHN DELANEY. Mr. Dewey?

Mr. HOFFMAN. Mr. Dewey had some experience.

Mr. BALDWIN. Do you maintain there are some master minds in the Republican Party?

Mr. HOFFMAN. Some so-called.

Mr. BROWN of Ohio. You know there is only one master mind.

Mr. HOFFMAN. We are in war.

Mr. COLMER. I did not have that in mind.

Mr. HOFFMAN. I have no idea the Republican Party will ever get the Negro vote until we get more power.

Mr. COLMER. You are going to have to do better than you have been doing, pull some new rabbits out of the hat, and I do not think frankly there are any left.

Mr. HOFFMAN. Mr. Chairman, I do not think it is very kind of the gentleman to be calling attention to the lack of success of my party.

The CHAIRMAN. I do not think so.

Mr. HOFFMAN. I feel very badly about it.

Mr. COLMER. I think the gentleman put his finger on it when he said we could not legislate these social reforms.

Mr. HOFFMAN. We tried it with liquor—prohibition.

Mr. COLMER. I think I heard something about that.

I wonder if the proponents of this legislation have thought of another thing, Mr. Hoffman, and you can express an opinion or not as you see fit.

Mr. HOFFMAN. I do not know what they have been thinking.

Mr. COLMER. My question is directed to them rather than to you, but I am using you for a vehicle you understand. Most of these so-called votes that are being sought, of course, live down in my section.

Mr. HOFFMAN. No; great numbers of them live in Detroit.

Mr. COLMER. I know a lot of them come to Detroit, New York, and Chicago and other places, but still the bulk of them do not.

Mr. HOFFMAN. In those cities where party allegiance is equally divided by the importation of certain individuals and classes the administration has been able to control the election in those cities and through the result there the State and national result.

Mr. COLMER. All right; but I was trying to get the fundamentals of this thing. I am just wondering if they thought about the possibility, if we should be so unfortunate as to have another depression, and I bear in mind with you that there are certain reformers, a lot of them back of this legislation, who say we can not have another depression; that the Government is going to see to that; that the Government is going to give everybody a job, and everybody is going to be happy. But if they should be mistaken and we should get into economic troubles in the future—God knows I hope we do not—if these employers are forced to take people they do not want I am wondering if those employers might not retaliate against some of these people they did not want in the first instance when they have to curtail employment. Now, ordinarily there are political reformers and social reformers who do not think about those things, nor do politicians. They just go after the votes, and to heck with the people that protest. I am just wondering if there is not some danger in that, and if that matter was called to their attention whether they would give consideration to it or still go after the votes.

Mr. HOFFMAN. The gentleman said that is a question that should be put to the people who advocate this legislation?

Mr. COLMER. That is right.

Mr. HOFFMAN. If you really want enforcement of legislation of this type put it in the courts which will do equal justice to everyone.

Mr. COLMER. I would like to ask another question. The Chair stated in response to a question from me that this Rules Committee had been complained about because your Labor Committee could not get hearings. That was something new to me.

Mr. HOFFMAN. Our committee has held very few meetings in years gone by.

Mr. COLMER. I knew because I heard you call attention on the floor a number of times to these strikes that were going on while the boys were dying over there. I thought maybe your committee would bring about a bill that would do something about these strikes.

Mr. HOFFMAN. I am sure this committee wants me to get out of here.

Mr. COLMER. Then this Labor Committee has not done anything in that respect?

Mr. HOFFMAN. No. And there was a vote yesterday in the Senate of 62 to 23 not to require men within the age to work or fight. And a vote of 54 to 27 not to even require loafers who had no essential job to do any work.

Mr. COLMER. I think that was most unfortunate. I know you do.

Mr. HOFFMAN. If someone wanted something constructive out of the Labor Committee it would undoubtedly be buried in the committee if it was opposed by organized labor.

Mr. COLMER. Of course, that does not obscure your vision and mine.

Mr. BALDWIN. I think Mr. Colmer's statement was that Mrs. Norton seemed to have difficulty getting a bill before this committee.

Mr. COLMER. I never said anything about Mrs. Norton.

Mr. COX. Mr. Hoffman, the bill does fit ideal into the scheme to build a planned economy, does it not?

Mr. HOFFMAN. The gentleman is well able, better able to judge than I am.

Mr. SMITH of Virginia. I take it we are going into executive session now.

Mrs. NORTON. Mr. Chairman, the chairman of the subcommittee is here this morning and has been waiting for some time. I would like for you to hear him.

Mr. COX. We will have to take it up again and give them more time.

Mr. SMITH of Virginia. Can we get Mr. Hoffman back to the stand later? I wanted to ask him some questions.

Mr. HOFFMAN. For amusement or information. I have no objection to either.

Mr. FISHER. Mr. Chairman, I want to be heard later.

The CHAIRMAN. Yes, sir.

Mr. COLMER. Mr. Chairman, how about the parliamentary situation? How long is it intended to go along? It is past noon.

Mr. COX. Mr. Chairman, I have no objection to giving people a full hearing on this bill.

The CHAIRMAN. Certainly.

Mr. COX. We had no notice until we stepped into the room. At least I did not.

The CHAIRMAN. No harm has been done. The committee will stand adjourned.

Mr. COX. I am not complaining.

The CHAIRMAN. The committee now will go into executive session.

Mrs. NORTON. Mr. Chairman, is it your intention to continue the hearings tomorrow morning?

The CHAIRMAN. Not tomorrow morning.

Mrs. NORTON. Will you notify the Labor Committee when you will resume hearings? Mr. Chairman, we have several very important witnesses here who would like to be heard.

The CHAIRMAN. All right. Tomorrow we cannot hear them because it will be a busy day. We will set a particular day. How is Monday?

Mrs. NORTON. All right. Monday or Tuesday seem to be satisfactory.

Mr. COLMER. Mr. Chairman, I have hearings of my postwar committee for Tuesday, Wednesday, Thursday, and Friday. It will be impossible for me to be here on those days.

The CHAIRMAN. All right. We can settle it in executive session. I cannot set the date, there being a disagreement.

(Thereupon, the committee at 12:15 p. m., March 8, 1945, went into executive session.)

TO PROHIBIT DISCRIMINATION IN EMPLOYMENT BECAUSE OF RACE, CREED, COLOR, NATIONAL ORIGIN, OR ANCESTRY

THURSDAY, APRIL 19, 1945

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RULES,
Washington, D. C.

The committee this day met at 10:30 a. m., Hon. Adolph J. Sabath (chairman) presiding, for further consideration of H. R. 2232.

ADDITIONAL STATEMENT OF HON. MARY T. NORTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

The CHAIRMAN. The next business before the committee is H. R. 2232, to prohibit discrimination in employment because of race, creed, color, national origin, or ancestry. Let us hear Mrs. Norton at this time, if she is ready.

Mrs. NORTON. Mr. Chairman, this bill was reported from the Committee on Labor February 20, a resolution for a rule was introduced February 23, followed by a request for a hearing on the same date.

At the request of this committee I appeared here on March 8 and submitted our reasons for requesting a rule to bring this proposed legislation to the floor of the House for consideration.

The Labor Committee has patiently waited for this rule. We again request that a rule be granted to give the Members of the House the opportunity to decide whether or not this bill should be enacted.

I repeat again what I stated to this committee on March 8, that the subject was widely discussed by both President Roosevelt and Governor Dewey during the last campaign. Both men, as leaders of their parties, were in complete agreement on the immediate necessity for this type of legislation. I also repeat what I said on March 8 that the Executive order of President Roosevelt ends 6 months after hostilities cease.

We believe that unless we continue by law the principle of economic freedom, we shall be faced with very serious trouble when the war ends. We cannot write a set of principles to serve in winning a war and refuse to accept them when peace comes.

The men and women serving in the armed forces are of all creeds, colors, and national origins, and their service to their country is not predicated on color or creed or national origin. They are Americans fighting for a common objective—freedom in the broad sense of the word.

The two questions that are heard most frequently in opposition to this bill are: Will an employer be compelled to hire Negroes regardless of his needs and desires, and will this bill insure social equality?

The answer to the first question is, most emphatically not. An employer is perfectly free to choose his employees on the basis of qualifications. The one thing he may not do is refuse to hire a man only because of his race, creed, color, or national origin.

The second question is answered in the bill itself. Anybody who has read this bill knows that it contains only economic equality and there is absolutely nothing in the bill which could be otherwise construed. There is no person in the world, white or black, yellow or red, rich or poor, who can win social equality except by earning it himself.

Now I have a statement by Representative Joseph Clark Baldwin of New York which I should like to read. Unfortunately, Mr. Baldwin had a very pressing engagement this morning in New York and he cannot, therefore, be here. He asked me to submit the statement to the committee. To be exact, he asked me to read it to the committee; but I do not know whether you want me to read it or simply submit it for the record.

Mr. SMITH of Virginia. I suggest that it be submitted for inclusion in the record. Perhaps we shall be able to hear Mr. Baldwin in person later:

Mrs. NORTON. The statement reads:

Mr. Chairman and members of the committee, H. R. 2232, the so-called Fair Employment Practices Act, which you now have before you, is the result of careful study on the part of the Labor Committee of the House. Prior to the close of the last session extended public hearings were held by the committee on this matter, and as soon as the new Congress convened a subcommittee was appointed to study the various bills covering the subject which had been introduced.

The present bill is, in fact, a committee bill, containing, I believe, the best features of all the bills introduced. It has been introduced by the chairman at the request of the committee.

I most earnestly urge you to grant a rule on the following grounds:

1. It fulfills a pledge contained in the platforms of both the major parties.

2. It demonstrates that as a matter of American policy, we believe the Atlantic Charter begins at home.

3. It continues into the postwar period a function of the Federal Government which was initiated and successfully carried on during the war by Executive order.

4. It insures one of the rights we have so often proudly proclaimed as fundamental in our democracy, to wit, equality of opportunity; and it does this without in any way attempting to establish social equality.

5. It does not in any way contravene States' rights.

6. It provides for continuing legislative responsibility in that section permitting Congress by concurrent resolution to veto any rule promulgated by the proposed Commission on Fair Employment Practice. (The reason for requiring a concurrent resolution is to obviate the necessity of subsequent Executive approval.)

7. The penalties established require court action for enforcement.

No one realizes more profoundly than I do the inherent difficulties involved in legislation of this sort. But today we have an experience ratio on which to base our conviction that this bill is not only just, but that it is also wise and workable.

The Fair Employment Practice Commission established by Executive order has functioned successfully and without apparent injustice and certainly no apparent complaint—a negligible number of its decisions have been taken into court—for well over a year. Surely we would know by now had this attempt to obtain justice for certain elements in the community produced such injustices against other elements that its continuation would be unwise.

Finally, Mr. Chairman and gentlemen, in these days when we stand on the threshold of world unity, I believe that the passage of such a bill as this by the House of Representatives or at least a decision to discuss it, which is normal legislative procedure, as can only be provided by this committee, would demonstrate as forcibly as any other single act I can think of, just what the type of democracy we are fighting for means to us, and can mean to the world. I beg of you to grant us a rule.

Mrs. NORTON. Mr. Chairman, we have several other witnesses who wish to be heard.

Mr. COX. I should like to ask the lady a few questions.

The CHAIRMAN. All right; go ahead.

Mr. COX. You speak of the necessity of this proposed legislation. Just what do you mean by that? What are the circumstances that make it necessary?

Mrs. NORTON. I thought I stated that very clearly.

Mr. COX. What are the conditions that make legislation of this type necessary, in your opinion?

Mrs. NORTON. Those conditions are obvious. I think it is hardly necessary to go into that question. We are trying to show the world that we believe in equality of opportunity. If we are telling other nations that we believe in equality of economic opportunity, we cannot well deny that opportunity to our own people.

Mr. COX. To which group or groups are we denying equality of economic opportunity?

Mrs. NORTON. There are certain groups in this country that have been very much discriminated against; and the President, knowing that, by Executive order tried to take care of the situation. The provisions of that Executive order expire 6 months after cessation of hostilities.

Mr. COX. In what respect have we been discriminating against the colored people? Give us concrete examples of that.

Mrs. NORTON. The facts are plain, Mr. Cox; and I don't think you are sincere in asking that question.

Mr. COX. I certainly am. What are the conditions that justify the enactment of this proposed legislation?

Mrs. NORTON. The Negroes are being discriminated against. This proposal aims to effect economic opportunity—equality of economic opportunity.

Mr. COX. Where is that to be done?

Mrs. NORTON. Everywhere. The Negroes have always been discriminated against everywhere.

Mr. COX. What, if you know, has been the experience of the committee set up by Executive order in this connection?

Mrs. NORTON. That has been the experience of that Committee. It has brought a great deal of equality of economic opportunity to these different groups that have been the objects of discrimination.

Mr. COX. That Committee has brought Federal power to bear upon employers; it has compelled employers to conform to the regulations or the edicts of this board that was created under the Executive order?

Mrs. NORTON. Of course, it has. They settle these cases without very much difficulty.

Mr. COX. In what respect does the experience of that Committee indicate the necessity for this proposed legislation?

Mrs. NORTON. I think the Committee representative could answer that question very readily, if you care to go into it.

Mr. COX. Insisting that this is a proper subject matter for legislation, how do you justify that statement?

Mrs. NORTON. I justify it on the records that have been presented.

Mr. COX. What records?

Mrs. NORTON. The records that have been presented to this Committee that was set up by the President. They show cases that have been settled, the cases involving discrimination.

Mr. COX. Have those records been brought to the Committee on Labor in the form of testimony?

Mrs. NORTON. Yes. Mr. Cox, I really wish you would read the hearings. I think they would help you very much.

Mr. COX. Do you mean the testimony taken by the Committee on Labor?

Mrs. NORTON. Exactly. Would you not like to read the testimony taken by our committee? I think it would be quite informative.

Mr. COX. From what source or sources did that testimony come?

Mrs. NORTON. I have a list of the witnesses heard by our committee. It includes: James B. Carey, secretary-treasurer, Congress of Industrial Organizations; Ernesto Galarzo, Chief, Labor Section of the Pan-American Union; David M. Grant, representing the mayors interracial conference, St. Louis, Mo.; Mrs. Beulah T. Whitby, national president of the Alpha Kappa Alpha Sorority, Detroit, Mich.; Dr. Samuel McCrea Cavert, general secretary of the Federal Council of Churches of Christ in America; Hubert Wyckoff, Assistant Deputy Administrator, War Shipping Administration; National Women's Trade Union League of America; Archbishop Robert E. Lucey, Archbishop of San Antonio, Tex.; Hon. Paul McNutt, head of Social Security Board and War Manpower Commission; Bishop James Albert Gray, president, Fraternal Council of Negro Churches in America; Walter White, secretary, National Association for the Advancement of Colored People; Dr. Stephen S. Wise; Rev. John LaFarge, spiritual director of the Catholic Interracial Council, New York City; Clarence E. Pickett, executive secretary, American Friends Service Committee and president of the American Council on Race Relations; Vincent E. Suitt, industrial relations secretary of Kansas City Urban League and also representing public affairs committee of the Paseo branch of the Young Women's Christian Association, Kansas City; Dr. Emily Hickman, general secretary of the Young Women's Christian Association; Reigonal A. Johnson, field secretary, National Urban Leauge; Bishop Francis J. Haas, bishop of Grand Rapids, Mich.; Mr. George Marshall, chairman, National Federation for Constitutional Liberties, New York City; Mr. Norman Thomas, Socialist Party; Maj. Edward J. Kelly, Chicago, sent a proclamation personally supported by Archbishop Stritch, Rabbi Birnbaum, Dr. Harrison Ray Anderson, President, Church Federation of Chicago, and many others; National Federation of Settlements, Inc., New York City; Farmers Educational and Cooperative Union; legislative chairman of Veterans of Foreign Wars, Springfield, Mass.; CIO international unions; United Automobile Workers; United Electrical Workers; United Cannery, Agricultural, Packing, and Allied Workers.

Many other organizations and individuals have been writing constantly favoring passage of this proposed legislation, and Malcom Ross, chairman of the President's Fair Employment Practice Committee.

Mr. COX. Did anybody appear before your committee in opposition to this bill?

Mrs. NORTON. Only one person.

Mr. Cox. Who was he; was he a Congressman?
Mrs. NORTON. Yes.
Mr. Cox. Who is he?
Mrs. NORTON. Mr. Fisher.
Mr. COLMER. He is a member of the Committee on Labor; is he not?
Mrs. NORTON. Yes; he is.
Mr. Cox. Are you satisfied that the enactment of this proposed legislation would not aggravate the condition complained of?
Mrs. NORTON. If I thought it would do so, I would not be here asking for a rule to cover the bill.
Mr. Cox. Do you think it is going to be pleasing to have a Federal agent step into one's business and tell him he is not satisfied with the personnel of his organization and he will have to reorganize?
Mrs. NORTON. That could not be done under this proposal.
Mr. Cox. Will he be pleased to be told that he has people on his roll that——
Mrs. NORTON. No man can do that. There is nothing in this bill that would cause anybody to do anything like that. The only thing that this bill calls for is a cessation of discrimination for the things I have enumerated.
Mr. Cox. You offer this bill in the name and in behalf of democracy, do you not?
Mrs. NORTON. Yes.
Mr. Cox. Do you think it is democratic to bring compulsion to bear upon the citizen and deprive him of the right of free choice in selecting his employees?
Mrs. NORTON. We are not doing anything of that kind. We are not depriving an employer of a free choice. We are simply trying to say that no man shall be discriminated against because of the conditions or facts prescribed in the bill.
Mr. Cox. Let us assume you are an employer producing an article that is expected to go into the channels of commerce; you employ, say, 12 persons, and you need 4 or 5 more, and you make that known by way of public notice, and 20 persons apply for your work. You examine the group and use your judgment in making selection of the 4 or 5 you need. It happens that in the group of 20 applying for work there are 1, 2 or 3 Negroes or others who belong to different racial groups; and after you have made your choice a dissatisfied member of a group makes complaint to this proposed Federal board and it takes jurisdiction and conducts an investigation of your choices.
Mrs. NORTON. There would be a hearing.
Mr. Cox There is a hearing extending over weeks and months and even up to a year.
Mrs. NORTON. That has not been the experience up to the present time.
Mr. Cox. The complainant testifies that he was refused employment because of his color or because of his race.
Mrs. NORTON. Yes.
Mr. Cox. You, the employer, know that is not true, and you give evidence to that effect, and you call upon every other person in the group of applicants to testify, and they say that, in their opinion, your manner of selection was perfectly fair, but this Federal board accepts the unsupported testimony of the complainant.

Mrs. NORTON. You are wrong. The complaint must be supported by evidence.

Mr. COX. They would accept the testimony of the one individual, would they not?

Mrs. NORTON. No; I think you are entirely wrong.

Mr. COX. You are made to revise your list and accept that individual, and the board has the power to make you pay salary to that complainant from the time he applied, even though the complainant has not struck a lick of work. Is that, I ask you, democracy? Is that free choice?

Mrs. NORTON. But that is not what the bill calls for. It would be necessary to show that the complainant had been denied employment on account of race or creed or something else specified in the bill—that he had been discriminated against on account of that fact.

Mr. COX. Who passes upon that?

Mrs. NORTON. The board would do that.

Mr. COX. The board?

Mrs. NORTON. Yes. The complainant must be supported in his allegation.

Mr. COX. The board has accept ed the unsupported testimony of a complainant, has it not?

Mrs. NORTON. No. The complaint must be supported by evidence.

Mr. COX. Where is the language in the bill that binds the board to the rule of preponderance of evidence?

Mrs. NORTON. Every complainant has a right of review in the courts.

Mr. COX. I do not believe that is true. There is no right in this bill for a right of review, is there?

Mrs. NORTON. Yes. Every decision is open to court review.

Mr. COX. Questions of law only would be subject to review; questions of fact would be binding on a court. The board's finding of fact would be binding upon a court, would it not?

Mrs. NORTON. If you would not review the testimony in court, what would you review? You have an advantage over me, you being a distinguished lawyer. I understand that is what is being done in court.

Mr. COX. The court would simply say whether or not the law had been followed. It would review questions of law and not of fact. Under your bill an appellant would not have the right to have the court examine the evidence upon which the board's finding was predicated.

Mrs. NORTON. You are wong; it certainly would.

Mr. COX. No; you are mistaken. If your bill does not provide for that review of facts, would you still be for the bill?

Mrs. NORTON. Let me ask you this question: Is not the same sort of procedure followed by every administrative agency of government?

Mr. COX. It may be in many instances, but do you not think that such a procedure under a democracy is wrong?

Mrs. NORTON. I would not say that I think that which has been tested, with success, throughout the years is wrong. Anybody can test any of the provisions of this bill. As I have said, there is only one objective in this bill, and it is plainly stated, namely, we want to effect plain, simple justice. We are by this method trying to show the people all over the world that we believe in and practice uniform justice.

Mr. Cox. Do you not think that questions of justice should be determined by courts in the American way rather than by some board or commission of government? Should not the complaining party be required to establish his case?

Mrs. NORTON. Who is the complaining party? Is the employer or the employee the complaining party? To whom would you grant justice?

Mr. Cox. If an employer had had a finding against him, it being predicated upon the unsupported statement of a complaining individual, which finding is contrary to the preponderance of evidence taken by the board, do you not think that the employer should have the right of court review?

Mrs. NORTON. Under this proposal the court would review a case wherein an employer felt himself wronged.

Mr. Cox. No; you are mistaken. If you are mistaken, you would not be in favor of this bill, would you?

Mrs. NORTON. I would not be against this bill under any circumstances you can mention. I am strongly for the bill. It is simply a question of justice for minorities.

Mr. Cox. Who wrote the pending bill?

Mrs. NORTON. Members of our committee wrote it. In fact, Mr. Cox, it may surprise you to know that 13 bills were written on the subject.

Mr. Cox. Were they brought to your committee in a finished state?

Mrs. NORTON. No.

Mr. Cox. Did you yourself write this bill?

Mrs. NORTON. Did I write this bill?

Mr. Cox. Yes.

Mrs. NORTON. You are by that implication giving me a great deal of credit. I suggested to the Legislative Counsel what the bill should contain. I do not think there are many Members of Congress who write their own bills. We employ a Legislative Counsel to do that work. We take our ideas to the Legislative Counsel and they frame a bill to embody those ideas. That is the uniform practice here, as I believe we all know. The Legislative Counsel wrote this bill at the direction of members of the Committee on Labor.

Mr. Cox. Does the bill express the views of the committee handling the proposed legislation?

Mrs. NORTON. Exactly. Thirteen bills were presented to the legislative counsel.

Mr. Cox. Which members of your committee called upon the legislative counsel to write into this bill the provision that would deny the citizen the right to have questions of fact reviewed by either a court or a jury?

Mrs. NORTON. I do not admit that there is any such provision in the bill.

Mr. SMITH of Virginia. May I call your attention to section 8 of the bill?

The CHAIRMAN. There are many acts of the Congress providing that the courts shall not be obliged to go into questions of fact, because that would require altogether too much time. I think that——

Mr. Cox. Irrespective of what has been done——

Mrs. NORTON. May I be permitted to listen to what the chairman has to say?

Mr. Cox. Certainly.

The CHAIRMAN. In some acts we provide that there shall not be a judicial review of questions of fact, but there is always the right of review of law points involved.

Mrs. NORTON. We have a Representative here who is a good lawyer, and I think he can answer these legal questions better than I can. I should like to have you hear him. I refer to Mr. Doyle of California.

Mr. Cox. Irrespective of what the Congress has done in other instances, any rule that is set up by the Congress or any other law-making body that denies the citizen the right of court review or appeal both as to questions of fact and law is wrong; is not that a fair statement?

Mrs. NORTON. I think there are extenuating circumstances in some cases.

Mr. Cox. What are the circumstances that justify the taking from a citizen the right to have his case thoroughly examined and fairly adjudicated?

Mrs. NORTON. As I have said several times, I contend that such right is not by this bill taken from the citizen.

Mr. Cox. If the individual under this bill is denied the right of review of facts and law on appeal, it is wrong; is not that true?

The CHAIRMAN. She is not a lawyer.

Mr. Cox. And she is not a child either.

Mrs. NORTON. You are a Member of the House and a member of this committee. Do you not think it is fair to allow the full membership of the House pass upon this proposal? I am not a lawyer and therefore I cannot answer legal questions; but I certainly do believe in justice and I believe that this Congress, if it means anything to the country, should have a right to give fair play and justice to the country. It is set up for that very purpose. Do you think it is unfair to ask that a rule be granted to let this bill come to the floor of the House, where it would take its chances? There are just as many able lawyers in that body as is the gentleman from Georgia, and I believe——

Mr. Cox. You are speaking of fair play and——

Mrs. NORTON. I have told you what I think is fair and unfair, and I am not going to add to that statement.

Mr. Cox. You are speaking of fair play. Do you think it is fair to deny a citizen the right of judicial review of his whole case on appeal?

Mrs. NORTON. You have asked that same question five times.

Mr. Cox. Is that democracy?

Mrs. NORTON. Do you call the denying of the Negro race opportunity for educational and economic equality democracy?

Mr. Cox. I think democracy is founded upon the right of free choice.

Mrs. NORTON. What do you mean by democracy?

Mr. Cox. Let me ask this question: Is this bill aimed at what we call the color line?

Mrs. NORTON Most assuredly they are the greatest victims of this discrimination.

Mr. Cox. Is it aimed at States' laws recognizing——

Mrs. NORTON. No; it is not.

Mr. Cox. How would this bill operate, in your opinion?

Mrs. NORTON. I think you are a good poker player. I believe in putting all the cards on the table. I believe you are prejudiced in

this matter. I say most emphatically that the purpose of this proposed law would help mostly the Negro population of our country.

Mr. Cox. It is against Jim Crow laws, and so forth, is it not?

Mrs. NORTON. I am an American, and I do not believe in Jim Crow laws.

Mr. Cox. You do not believe in States' laws that recognize inequality in races, do you?

Mrs. NORTON. I do not. I think the quicker we get rid of Jim Crow laws the better off the States will be. And, referring directly to the State of Georgia, the present Governor of that State seems to be making some important changes in your State's laws.

Mr. Cox. Is a State law forbidding intermarriage of different races a proper one?

Mrs. NORTON. Now you are going to the subject of social equality. I am discussing economic equality, which has nothing to do with social equality. Please do not get into the social field, because this bill has nothing to do with that.

Mr. Cox. You would invalidate the States' laws providing for separate schools for whites and Negroes, would you not?

Mrs. NORTON. Personally, I would do just that.

Mr. Cox. You would invalidate the States' laws providing for separate hotels for whites and Negroes, would you not?

Mrs. NORTON. So far as I am personally concerned, I would. But I do not believe——

Mr. Cox. How would this proposed law operate upon State agencies?

Mrs. NORTON. I do not think this proposed law would in any way interfere with any State agency unless that agency interfered with the law.

And now I ask that you hear Mr. Clyde Doyle, a Representative from California. Perhaps he, a lawyer, can answer your legal questions.

Mr. SMITH of Virginia. I should like to ask a few questions.

The CHAIRMAN. Go ahead.

Mr. SMITH of Virginia. Your State of New Jersey recently has enacted a similar law, has it not?

Mrs. NORTON. Yes; and so has New York State. Are you interested in the New York law?

Mr. HALLECK. How do you like the New Jersey law?

Mrs. NORTON. I do not know enough about it to say whether I like or dislike it. I think it could be a better law, from what I have heard about it.

Mr. SMITH of Virginia. Does it parallel the proposal now before us?

Mrs. NORTON. It does to some extent. I have not studied it, though. It conforms to this proposal in some respects, I understand. I do not have a copy of that law with me. It was enacted very recently.

Mr. SMITH of Virginia. Do you think there is a necessity for the New Jersey law and a Federal law on this subject?

Mrs. NORTON. Yes; I do.

Mr. SMITH of Virginia. Why do you say that?

Mrs. NORTON. First of all I feel that a Federal law tends to strengthen any State law.

Mr. SMITH of Virginia. What would it have to do with State law?

Mrs. NORTON. It would cooperate with State law like all other Federal laws do. We have a wage-and-hour law in many States, but we had to enact a Federal law of that kind to get the best results.

Mr. SMITH of Virginia. What have been the results of the New York law on this subject?

Mrs. NORTON. I think it is rather too new to say. It was enacted very recently. I really cannot tell you much about it.

The CHAIRMAN. All right; thank you for your appearance.

Mr. HALLECK. Do I understand that nobody else is to be permitted to question Mrs. Norton?

The CHAIRMAN. I did not mean to cut anybody off. I had thought everybody had finished questioning the lady. Go ahead, Mr. Halleck.

Mr. HALLECK. I have a few questions that I should like to ask about this proposal.

Mrs. NORTON. I shall be glad to answer, if I can, especially if they are not legal inquiries.

Mr. HALLECK. Some of them are legal questions, but they involve propositions of general understanding and determination that I do not think anybody would need to be a lawyer to have an opinion about. What I am about to say, I might preface by suggesting that I assume for the purpose of these questions that we want to effect the enactment of some legislation that will equitably and properly prohibit discrimination we have been talking about. Mr. Smith asked you about the New Jersey statute. As I understand, the New Jersey statute undertakes to prevent discrimination in that State—it sets up a commission to effect that result, but it provides that the commission shall enforce its orders and its complaints in the courts of New Jersey. We have in the Federal Government in some agencies a different manner of approach. We have the NLRB, after which the pending procedure is patterned and where frequently it is said the Board is judge, jury, and prosecutor. There is no division of judicial and prosecuting functions. Frequent complaint is made against that condition. You are not unfamiliar with that, no doubt. Then we have another agency known as the Pure Food and Drug Administration which has power to control certain practices in the food and drug businesses. It files a complaint in the courts and those complaints are heard in the courts. Now are you particularly wedded to this type of approach as distinguished from the approach that might parallel the Pure Food and Drug Administration procedure?

Mrs. NORTON. Answering that question generally I would say I am not opposed to any method of approach that would properly effect the objectives of this bill. That is what I have in mind over and above everything else.

Mr. HALLECK. You speak of justice and aspects of justice, and certainly as Members of Congress and as citizens we should seek to achieve justice, which is what I should like to do. But that is not a one-way street. I think we should seek to achieve justice for all interested parties.

Mrs. NORTON. I agree with that statement.

Mr. HALLECK. In that pursuit it would seem fair to me to try to work out an arrangement that would undertake to prevent discrimination, if that is what one seeks, and if that involves the bringing about of justice, work to that end, and at the same time do what we can to eliminate or avoid other injustices.

Mrs. NORTON. That is right. Do you not think that by the time this bill is thoroughly debated on the floor of the House, and after everybody shall have had a chance to review the bill, discuss it fully from all angles, it will emerge as a just one? Have you not that much confidence in the membership of the House? All I am asking for is a rule that will allow the bill to reach the floor of the House for thorough discussion and appropriate action.

The CHAIRMAN. You are not asking for a closed rule?

Mrs. NORTON. No, I am not.

The CHAIRMAN. You want an open rule?

Mrs. NORTON. That is right.

If you can write a better bill than that which is before you, I am perfectly willing that you do so.

Mr. HALLECK. I am not seeking to embarrass you.

Mrs. NORTON. I am not easily embarrassed.

Mr. HALLECK. I appreciate that. I sometimes wonder what the function of the Committee on Rules is. Many times it has seemed to me that a worth-while condition is created when these problems are inquired into by the Committee on Rules, in order that we may form a judgment as to what may transpire on the floor of the House.

Mrs. NORTON. I say this from my heart—I think the Rules Committee has been most unfair to the Labor Committee. We have applied for many rules and not one for which we applied has been granted. Two rules for which we did not apply were granted gratuitously with substitutions. I have here [indicating] a long list I could give you of bills reported from the Labor Committee. I cannot understand why the Rules Committee is determined not allow the Labor Committee to bring its bills to the floor of the House. The first one to reach the House under my leadership was the wage-and-hour bill, brought to the floor by petition to discharge the Rules Committee. Some have been brought up by unanimous consent. Then there was a bill that came up on calendar Wednesday, and another under suspension of rules. Not a bill from our committee has reached the floor under a fair rule granted by this committee.

Mr. HALLECK. Are you speaking of the committee collectively, or otherwise? I do not want you to catalog me too quickly in this connection.

Mrs. NORTON. I am speaking of the Rules Committee collectively, not individually.

Mr. HALLECK. We shall simply have to do the best we can about that.

Mrs. NORTON. I believe in plain talk. I am not the smartest person in the world, but I am one of the most sincere. I never start a job which I think is a proper one that I do not intend to go through with as best I can.

Mr. HALLECK. When we grant your claim to sincerity, you would not object to our asserting the same claim, would you?

Mrs. NORTON. No; but, collectively, as a committee, I think you have been most unfair to the Labor Committee.

Mr. HALLECK. The Committee on Rules is indicted frequently, and we shall simply have to do the best we can in that connection, and you have lectured us quite severely just now, as well as at other times. At one time, you will recall, there was quite a demand for an amendment to the Wagner Act.

Mrs. NORTON. That is right.

Mr. HALLECK. But the Labor Committee, under your leadership, did not do anything about that demand, as I remember.

Mrs. NORTON. Yes; it did. The Labor Committee did its job at that time, but its bill was made to give way to a substitute bill.

Mr. HALLECK. A bill which sought to change that law in some respects was acted upon in the House, but died in the Senate, as I remember.

Mrs. NORTON. That was not a Labor Committee bill. Thank God for that.

Mr. HALLECK. Whatever position the Labor Committee may have taken on that matter, certain of those amendments were adopted by a vote of 2 to 1 in the House, I believe. They had to do in considerable measure with the procedural aspects of the Labor Act, touching upon a separation of the judicial and the enforcements functions, under an arrangement that I thought was all right. I did not think they would interfere with a fair administration of that act. I thought they would effect a fair administration for those in whose behalf it was devised, and also effect a better public reaction in connection with the administration of the act. Would you object to any such amendments in connection with the present bill?

Mrs. NORTON. I am sure the members of the Labor Committee would be glad to consider any amendments that the gentleman might offer in good faith.

Mr. HALLECK. If I should offer such—and I am not indicating that I shall—they would be offered in good faith.

Mrs. NORTON. I do believe that.

Mr. HALLECK. I think it is serious when we have such a tremendous growth of administrative law and we are precluded in many acts, as we would be in this proposed act, from getting a judicial determination on questions of fact, if there is any evidence at all to support the determination of a commission or board. That might be the evidence of 1 against 100. In this case, the court would be bound, upon prosecution of an appeal, by the findings of facts of this commission or board. I think we should look very carefully into situations under which we make the same agency the prosecutor and the judge.

This bill says:

> Whenever it is alleged that any person has engaged in any such unfair employment practice, the Commission, or any referee, agent, or agency designated by the Commission for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect and containing a notice of hearing before the Commission or a member thereof, or before a designated referee, agent, or agency at a time therein fixed not less than ten days after the servicing of said complaint.

The Commission would formulate the complaint and the Commission's lawyer would prosecute the case and the Commission itself would decide the issues of fact without judicial review of the facts. Whether the Commission would do the best job or not, that arouses in the minds of the people a question as to the results being achieved. I think this is a matter that should concern everybody who is honestly trying to effect fair legislation to accomplish desirable objectives with proper safeguards. There should, of course, be assurance that the one complained against should have the right to have his case thoroughly and fairly determined as to questions of fact and questions of law.

Mrs. NORTON. I know you are sincere. If you will submit an amendment that you think is fair and will take care of this particular question that arises, I am sure the members of the Labor Committee will give it very thorough consideration.

Mr. HALLECK. I appreciate that.

Mr. COLMER. Mrs. Norton, at page 4 of the committee report it is stated that—

> This section also provides—

Referring to section 11—

> that in the discretion of the Commission it may require that a person found to have violated any of the provisions of the act shall be barred from receiving another Government contract for a period not to exceed 1 year. This section is based upon a similar provision in the Walsh-Healey Act of 1936."

Mrs. NORTON. Is not that same provision in all or most Government contracts?

Mr. COLMER. This is a provision you have written into your bill that would bar a man from getting another contract, if your bill is adopted. If the Commission shall have found that a man violated any provision of this proposed law, he would be denied any other Government contract for at least 1 year. I am not trying to propound a legal question; it is simply a matter of common sense. If this proposed Commission, which would be more or less an ex parte affair, should come to the conclusion that a contractor had violated some provision of this act, although he denied he had done so, he would be denied contracts for a year. Do you not think that would be rather unfair and rather harsh procedure?

Mrs. NORTON. No; I do not. I do not think that could be done without supporting evidence, proving he had done so.

Mr. COLMER. I know, from reading some of the hearings had here in the matter of the Potomac Electric Co., that the FEPC Chairman took the position in advance that the company was violating the Presidential order, and they proceeded on that theory. If this act is adopted, I think we have a right to assume that such man or one of his predelictions would be head of this Commission.

Mrs. NORTON. Is there not a similar provision in the Walsh-Healey Act and some other acts—the Walsh-Healey Act particularly?

Mr. COLMER. You have no law on that subject; and this looks to me to be something pretty harsh. That is one minor part of this proposal, because the proposal affects only Government contracts.

As you know, I come from a section of the country that has quite a large Negro population. I am just wondering, as one who really feels kindly toward those people—and you may not agree with that statement—whether this type of legislation would not harm rather than help that class of people?

Mrs. NORTON. We heard those same arguments when the wage-and-hour bill was up, and yet one of the men who was among the greatest opponents of that measure recently told me that, although he had opposed that measure, it had done more for the South than anything else. These are matters of education and progress. There will, we know, be a little difficulty in the beginning; but, after all, is not this very much worth while? Do you believe in the objective we are setting for the world at the present time?

Mr. COLMER. I do not believe this proposal will work out. That is what I am trying to say.

Mrs. NORTON. If it does not work, I think we had better stay away from San Francisco.

Mr. COLMER. That argument is a matter of opinion. Here we are dealing with a particular subject.

Mrs. NORTON. That is true. We are dealing with only one subject, but if we cannot solve the problem of freedom and justice for all, in our own country, it would be futile to attempt to influence the world.

Mr. COLMER. I know that a big majority of the white people in my section of the South feel kindly, and act accordingly, toward the Negro population.

Mrs. NORTON. What have they done for the Negroes in more than 200 years?

Mr. COLMER. I fear that you are not accurately advised as to that condition in the South.

Mrs. NORTON. I am speaking only about the educational facilities and economic opportunities provided for the colored people in the South. I grant that probably your State is and has——

Mr. COLMER. We feed the colored people when they are hungry; we clothe them when they are naked; we provide medical attention when they are sick. We see to it that they do not suffer.

Mrs. NORTON. I understand that some colored people have not been so well fed or clothed.

The CHAIRMAN. Please let us stick to the provisions of the bill and not wander far afield.

Mr. COLMER. This has to do with the legal aspects and the fundamentals involved. Do you believe that the Prohibition Act was a success?

Mrs. NORTON. No; I do not.

The CHAIRMAN. That has nothing to do with this bill.

Mrs. NORTON. Why bring that matter up at this time?

Mr. COLMER. I am afraid our chairman, himself, is a bit prejudiced in this matter, since prejudice is being so freely discussed here. I should like to ask my questions in my own way, anyway.

Mrs. NORTON. There is a lot of prejudice in the world.

Mr. COLMER. Do you believe in prohibition?

Mrs. NORTON. I am not discussing it. I never believed in it, and you know that.

Mr. COLMER. Was it not a legislative edict affecting the morals of the people?

Mrs. NORTON. It was something entirely different than the immediate problem we have in hand. This subject refers to equality of economic opportunity for all the people of our country. I believe that equality of economic opportunity should be protected, and this is the only way we can do it, in my opinion. If there is any better way to write the bill than it is written to achieve the same objective, I am very willing to have somebody else try it.

Mr. COX. You do not believe in home rule any more, do you? You want all Government centered here in Washington, do you not?

Mrs. NORTON. That is a silly question to ask, and you know it. Are you going to ask me whether I believe in my grandmother?

Mr. COLMER. I do not believe you are being perfectly fair in connection with this matter. Maybe I am not qualified to interrogate on this question, but I do feel that there is an analogy between the Prohibition Act and this proposal, whether or not you think so.

Mrs. NORTON. I do not think there is. I want you gentlemen from the South to understand that I know you have quite a problem in hand and I am sympathetic with you in that connection. I think the way to solve that problem is through education and progressive measures that will bring the people of the South up to the same standards as we have elsewhere in the country. I think that if this bill is enacted into law it will do just that. I think that, 15 or 20 years from now, when I shall not be here, you will find that the South will show the very greatest progress under this proposal, regardless of how you may feel about it today.

Mr. COLMER. What people of the South do you want to bring up to the standards of the remainder of the country?

Mrs. NORTON. What people there do I want to bring up to the standards enjoyed elsewhere in the country?

Mr. COLMER. Yes.

Mrs. NORTON. A large majority of the people of the South.

Mr. COX. To whose level do you want to bring them up or down to?

Mrs. NORTON. I would bring them up to a standard of living that is decent—American.

I should like to say that I did not come here to discuss irrelevant questions. I think that is unfair. I do not think the Rules Committee has ever been fair to the Labor Committee. We are determined that this bill shall become law regardless of the length of time it takes us to effect that result.

Mr. COLMER. You have made some rather strong remarks against this committee and the South. I will answer your question, with all due respect to you. The South is perfectly able to take care of itself in connection with any problem, large or small. You indict the great majority of the people of the South whom you would, you say, elevate. I need not remind you, as well as others, that the South largely furnished the statesmanship and leadership of this country prior to its political isolation. Look over the roster of 32 Presidents of the United States and see from whence they came.

Mrs. NORTON. What would the South have done without the North?

Mr. COLMER. What would one section of the country do without the other section? I am not indicting the people of the North, I am simply responding to a gratuitous slander of the South.

Mrs. NORTON. I am for unity between the North and the South, and I think this proposal will effect that.

Mr. COLMER. It will effect the greatest disunity the country has ever witnessed. There is no question about that.

Mrs. NORTON. I do not believe that.

Mr. COLMER. Certainly you do not believe that. You are not acquainted with actual conditions in the South.

Mrs. NORTON. Fifteen or twenty years from now, when I shall not be here, you will find that this proposal has not done all the bad things you think it will do.

Mr. COX. Why did you leave out of your bill the subject of religion? Suppose an employer should discriminate against one who might be an applicant for work on account of his religion?

Mrs. NORTON. What do you call "creed"? Would you rather have the word "religion" in the bill? Creed and religion mean the same thing.

Mr. COLMER. How about discriminating because of sex? Many women are being discriminated against in connection with employment because they are women. What would you do in such a case?

Mrs. NORTON. "Persons" are mentioned in the bill. Do you not think women are persons? If you want to insert the word "sex" instead of "persons," I have no objection. I consider myself a person, although I am also a woman I have always felt that way about it.

In conclusion, I hope you will not think harshly of me for what I have said about the Rules Committee.

Mr. COX. That is all right; it is like water falling on a goose's back.

Mrs. NORTON. I do not have anything more to say.

STATEMENT OF HON. CLYDE DOYLE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

The CHAIRMAN. If there are no further questions and the witness has nothing further to tell us, let us excuse her with the thanks of the committee and hear Mr. Clyde Doyle, a Representative in the Congress from the State of California.

Mr. DOYLE. I realize that this is my first appearance before this committee as a baby Member of the House.

Mr. COLMER. Are you a lawyer?

Mr. DOYLE. Yes; and I have had 25 years' experience in that work in civil law.

Mr. COLMER. And I am very sure you are a good lawyer.

Mr. DOYLE. Thank you, but that remains to be seen. First, I speak without having any particular geographical section of my Nation in mind. You gentlemen from the South will therefore know that I am not thinking of the South in comparison with any other part of the country.

As I look at section 2, subsection (b), it provides that individuals shall have the right to work without discrimination against them because of their race, creed, color, national origin, or ancestry.

I am speaking in behalf of an open rule for the bill, so that it may be amended on the floor, if that is thought desirable by the membership of the House.

Subsection (c) of section 2 provides that—and I quote:

> it is hereby declared to be the policy of the Congress to protect such right and to eliminate all such discrimination to the fullest extent permitted by the Constitution, and this act shall be construed to effectuate such policy.

Going to questions asked by gentlemen of the committee of the distinguished chairman, who is not a lawyer, if you will read at the bottom of page 9 of the bill, subsection (d), you will find an answer to many questions asked. It provides that—

> If upon the record, including all the testimony taken, the Commission shall find that any person named in the complaint has engaged in any such unfair employment practice, the Commission shall state its findings of fact and shall issue and caused to be served on such person an order requiring such person to cease and desist from such unfair employment practice and to take such affirmative action, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this act. If upon the record, including all the testimony taken, the Commission shall find that no person named in the complaint has engaged in any such unfair employment practice, the Commission shall state its findings of fact and shall issue an order dismissing the said complaint.

Mr. HALLECK. Would the rules of evidence apply in that hearing?

Mr. DOYLE. I think they do without question.

Mr. HALLECK. The NLRA provides that the rules of evidence shall not apply. At the time it was under consideration in the House I offered an amendment to make the rules of evidence applicable, as it seemed to me that such rules should apply. This bill follows the pattern of the NLRA. It specifically provides in that act that the rules of evidence shall not apply. It has been shown many times in hearings affecting the NLRA that things frequently were considered in making a decision that was not presented in the open hearing. The one complained against did not know those things were even before the board when a decision was made. Those things disturb me when we proceed to set up an agency that will have as far-reaching power and authority as is here proposed.

Mr. DOYLE. I agree substantially with what you say. I am opposed to any board or commission having the sole right to assess a penalty when it has the sole responsibility for prosecuting also.

Mr. COX. Then you are not for this bill.

Mr. DOYLE. Yes; I am. I think that it may be improved when it reaches the floor of the House under an open rule.

Mr. COX. There ought to be a change in that particular respect?

Mr. DOYLE. I do not yet know, with my limited experience in the Congress, the point at which administrative law should be corrected so as to permit necessary judicial review of facts also. I know that such review—reasonable, judicial—is fundamental in our American system of life. Where the point comes in administrative procedure I do not know. I know it must come somewhere where it will be constructive and cannot be used primarily for delay or for defeating the ends of justice.

Mr. HALLECK. I appreciate your attitude. It is very apparent that you are trying to do the best with this that you can. The substantial evidence rule generally applicable in courts holds that if there is any evidence to support the findings of fact below, the upper court will not disturb that finding. Particularly in a situation where a commission is both investigator, prosecutor and judge, makes a finding of fact you have complaints. I am one of those who have always believed that we cannot effect in court a complete review of facts because such a procedure would burden the courts so that they could not keep up with their work.

We adopted in the House an amendment to the substantial evidence rule providing that it shall be conclusive unless it is made to appear to the satisfaction of the court, first, that such findings are clearly erroneous or, second, that such findings are not supported by substantial evidence. I never was absolutely sure as to what that means. I think it strengthened the substantial evidence rule and yet I do not believe it went to the extent of requiring a complete judicial review of the facts.

Mr. DOYLE. I think it is fundamental that this committee, if possible, allow a bill which appears so fundamentally worthy of discussion and decision, to come to the floor of the House for thorough discussion and frank debate. That is the purport of my brief remarks. I think it fundamentally necessary in keeping with democratic procedures that this committee allow a free and full discussion of the

fundamental issue of our own democracy as set forth in subdivisions (b) and (c) of section 2 of this bill, by the House membership.

Mr. HALLECK. As this subject has been discussed across the country some persons interested in its enactment have said to me that they do not think it should apply to offices of doctors and lawyers, retail establishments, and so forth. Would the bill, as now drafted, apply to law offices employing six or more persons?

Mr. DOYLE. I do not know, but I do not think it would. I have not gone into that phase enough to answer.

Mr. HALLECK. I have just glanced at the bill. It looks to me that it——

Mr. DOYLE. It refers only to Government employment.

Mr. HALLECK. No; it refers also to private employment.

Mr. DOYLE. I feel this way about it: I would say that any American lawyer who was un-American and prejudiced enough to discriminate against a person and refuse to give him employment solely on the ground that he was of some particular race, color, and so forth, probably should come under this proposed law. I think, fundamentally, we must get down to the basis of knowing there is no security for the majority in employment so long as there is insecurity for the minority in employment. There is no economic security and safety for the majority of any people, so long as we have a large minority of that same people insecure economically because of prejudice or bias.

Mr. HALLECK. I was not undertaking to express an opinion. I was just inquiring for information.

Mr. DOYLE. That answers, fundamentally, the basis on which I would answer your question.

Mr. HALLECK. You would not undertake to say that the bill, as written, would preclude that?

Mr. DOYLE. No.

Mr. HALLECK. Are you a member of the Committee on Labor?

Mr. DOYLE. No; I am not.

Mr. HALLECK. Except as an employer might declare he was not hiring persons on account of their race, creed, and so forth. I am wondering how we could establish the fact that he was discriminating against prospective employees on that account? As you view this bill, would it be bona fide proof that an employer were discriminating against colored people if he had 100 white employees and no colored employees?

Mr. DOYLE. No. As a matter of fact it would be very difficult to prove discrimination. The gentleman knows that one man's word against the word of another man would be practically worthless; but declarations or writings would be helpful evidence.

Mr. COX. Not before a rigged Commission.

Mr. DOYLE. I would not want to indict the administration of our American commissions to that extent.

Mr. HALLECK. I assume a Commission would try to enforce the law as it is written and according to intent, but in many cases there have been administrative operations that have rather shocked me in my continuing assumption in that regard. The question of proof and of the assumption that might be indulged that if a man did not employ a given number of all races and colors and creeds he might therefore be violating the act, are interesting.

Mr. DOYLE. That is one reason we probably feel the same. If a Commission's agent should go to that extreme, which is contrary to the rules of evidence, as we know them, I would of course, be opposed to such a procedure. Some place along the line I believe it is fundamental in administrative law, that there be prompt court review of fundamental issues. Therefore may I say, in discussing this bill as briefly as I have, I feel that it is fundamentally essential, as I sense the feeling of our country in this terrific time in our history, that you give us the right on the floor of the House of full discussion and consideration of this fundamental legislation under an open rule, so that we may elicit all the facts and reach a sound conclusion, based upon the judgment of 435 Members rather than the judgment of about a dozen members, or less of this committee. This is the democratic way, I believe.

Mr. COX. If under the bill the substantial evidence rule does not apply, and if the Commission would be made both the judge and the prosecutor, you would think the bill should be amended, would you not? so that it would protect the rights of the citizen.

Mr. DOYLE. Every right of a citizen under the Constitution must be protected.

Mr. COX. Would you have objection to the preponderance-of-evidence rule?

Mr. DOYLE. I think I would, unless clearly stated by you just what you mean. I would want the rules very clearly defined, in every case.

Mr. COX. Would you object to providing for trial in the locality in which the alleged offender resides?

Mr. DOYLE. No; unless it were shown that the court was prejudiced and biased there. Even courts are human. It is not unusual for cases in courts to be moved to another jurisdiction on account of prejudice of the court.

Mr. COLMER. Is it not fair to assume that a court would be as free of prejudice as a commission would be?

Mr. DOYLE. Not necessarily so. If a commission moved into a particular territory for a hearing, it might be free of any connections and prejudices that a court might entertain. Our courts are elected by the people, and they are not always elected by a majority of the people, who actually reside there.

Mr. COX. What do you mean by that?

Mr. DOYLE. Some of our courts over the Nation are sometimes subject to popular sentiment and vote getting and even political influence sometimes; the same as everybody else is at exceptional times.

Mr. COX. On account of that condition would you oppose a proposal that would bring a court review of facts upon appeal?

Mr. DOYLE. I would not, if some simple, prompt, sincere manner is provided by which the case could be moved along promptly if prejudice or bias were shown.

Mr. COX. If there were a right for change of venue, to which court would you take a case?

Mr. DOYLE. To the nearest qualified court, so as to avoid unusual expense and loss of time to all concerned.

Mr. COX. What effect would this proposal have on the dual system of schools in the South?

Mr. DOYLE. I do not know of any.

Mr. Cox. What effect would it have on community school boards?

Mr. Doyle. I do not know of any.

Mr. Brown of Ohio. Mr. Doyle, this Commission would, seemingly, be authorized to set up its own rules and regulations within the framework of the bill. That would give the Commission, as I read the measure, rather strong and wide powers. For instance, there is no guaranty that a person charged with violation of this act, if it becomes a law, could be represented before the proposed Commission by counsel.

Mr. Doyle. Yes; it contains that provision.

Mr. Brown of Ohio. Where is it.

Mr. Doyle. Section (c) at page 9, subsection 7. It provides that—

The person so complained of shall have the right to file an answer to such complaint and to appear in person or otherwise, with or without counsel, and give testimony at the place and time fixed in the complaint.

The Chairman. The committee will now adjourn, to meet tomorrow morning at the usual time, 10:30 o'clock.

(Thereupon at 11:55 a. m., Thursday, April 19, 1945, the committee adjourned, to meet at 10:30 a. m., Friday, April 20, 1945.)

TO PROHIBIT DISCRIMINATION IN EMPLOYMENT BECAUSE OF RACE, CREED, COLOR, NATIONAL ORIGIN, OR ANCESTRY

FRIDAY, APRIL 20, 1945

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RULES,
Washington, D. C.

The committee this day met at 10:30 a. m., Hon. Adolph J. Sabath (chairman) presiding, for further consideration of H. R. 2232.

The CHAIRMAN. Let us resume consideration of H. R. 2232 by hearing Mr. Randolph, if he is ready.

STATEMENT OF HON. JENNINGS RANDOLPH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WEST VIRGINIA

Mr. RANDOLPH. Mr. Chairman and gentlemen fo the committee, I feel certain that any statement I may make in reference to H. R. 2232 will be understood by my colleagues as my sincere and well-considered opinion.

I have been a member of the Committee on Labor of the House during my 12 years in the House of Representatives. During that time there have been occasions when I have opposed measures that were reported by our committee and there have been many occasions when I have supported measures that were reported by our committee.

I shall always feel that I had a very genuine part in the formulation of the legislation to effect wage-and-hour measures and the principle of collective bargaining in labor matters. These purposes are a part of the fabric of American society today from the relationship of employer and employee.

You have under consideration, of course, the so-called fair employment practice bill, which would prohibit discrimination in employment because of race, creed, color, national origin, or ancestry. It would give the force of law to the program that was set in motion and carried forward by the action of the late President of the United States in connection with a temporary organization serving during the impact of war.

Mr. Chairman and gentlemen of the committee, I do not believe—and I have the highest regard personally and collectively for your committee membership—that the merits or demerits of this proposal can be settled in this Committee on Rules. I believe that when the Labor Committee, which is one of the standing committees of the House, goes into a proposition as thoroughly as it has in connection with this matter, with the result that 12 members of that committee signed the majority report, such is sufficient evidence for the Rules

Committee, acting as the group channeling legislation to the floor of the House under limitation as to debate and as to presentation of amendments, to let the proposed measure go to the floor of the House, where a vote could either support the contention of the proponents or the House could refuse its approval.

Mr. BROWN of Ohio. How many members has the Committee on Labor?

Mr. RANDOLPH. It has 21 members. Two members—Mr. Fisher, of Texas, and Mr. Hoffman, of Michigan—have filed a minority report or reports. The majority report is concurred in by 12 members of the committee, who actually signed that report.

Mr. SMITH of Virginia. If your premise were correct, it would be the duty of the Committee on Rules to report a rule for every bill on the calendar and which might have come from a legislative committee. There would, in fact, be no need for a Committee on Rules.

Mr. RANDOLPH. I do not believe I have ever contended that such is true. I have said that, when extensive hearings have been held on a measure, and when 12 members of a committee have seen fit to vote to favorably report a measure, and attach their names to such a report, which is, perhaps, an unusual procedure, it is a strong indication that such committee believes that the Congress itself should have the responsibility of passing upon the measure involved.

Mr. HALLECK. I should like to ask Mr. Randolph a question.

Mr. RANDOLPH. I shall be glad to have you do so.

Mr. HALLECK. It has been suggested to me that if this bill were enacted into law it might be deemed proper for the Commission to undertake to say to an employer that he could not refuse to hire a Communist, it being the contention that the word "creed" is so broad that it includes that political belief, and also in some measure has to do with a religious consideration. Do you understand that the language of this bill might be so interpreted?

Mr. RANDOLPH. The subcommittee, of which I was chairman, in hearing testimony on more than 12 bills of this kind that came before the full committee, determined that the word "creed" applied only to a religious and not to a political preference, and we termed the Communist philosophy the same as the philosophy of man who might be a Socialist, a Democrat, or a Republican, or anything else politically.

Mr. HALLECK. Do we not often refer to political creeds? Without regard to what your subcommittee thought about it, might it not well be that the word "creed" would be so interpreted as to include that situation?

Mr. RANDOLPH. I do not think it would. I am sure it would not.

Mr. HALLECK. Would you be in favor of putting on the statute books a law that would say to an employer he could not refuse to employ a Communist?

Mr. RANDOLPH. I think that if an employer wants to employ a Democrat, a Republican, a Socialist, or a Communist he should be allowed to do so.

Mr. HALLECK. And would you subscribe to the reverse of that. Would you be in favor of placing on the statute books a law telling an employer that he must employ a Communist?

Mr. RANDOLPH. Yes.

I think there are Communists among the employers as well as among the employees.

Mr. HALLECK. Did your subcommittee make any determination as to the possible effect of the rules and regulations that might be put into force by this proposed Commission, as they might apply to labor contracts made on a national scale?

Mr. RANDOLPH. Yes; we called before the subcommittee—not only the subcommittee but the full committee—the Chairman of the present Fair Employment Practice Committee and he discussed that matter, and we came to the agreement that there would not be any violation of any program that would be set in motion by the decisions that would be handed down under this organization; there would be no reason to disregard any action that had been taken in any pending case.

You mean in an individual case, I understand?

Mr. HALLECK. No. I do not believe we are thinking of the same thing. I refer to the making of a contract on a national scale between labor organizations and employers, setting up the various conditions of employment and so forth, having to do with matters of that sort. Would it be fair to say that the rules and regulations that might be promulgated by the proposed Commission would be controlling as against that contract between employee and employer?

Mr. RANDOLPH. I am sorry that I did not correctly understand your earlier question. I think the Commission would have the controlling authority in a matter of this kind. Its recommendations, I believe, would hold a stronger force.

Mr. HALLECK. Why was it provided in the pending bill that after the Commission is appointed and begins to function all the present employees of the organization working under Executive order shall be blanketed into the service of the permanent Commission? Would it not be better to let the Commission choose its own staff for the enforcement and carrying out of this legislation?

Mr. RANDOLPH. Frankly, I am in agreement with the gentleman from Indiana as to that matter. I have so stated. I think perhaps the reason behind that provision is that these individuals have had experience under the temporary Committee, and they would, therefore, be familiar with the problems involved; but I believe the proposed legislation should come to the floor of the House under an open rule allowing adequate debate of, say, 4 to 6 hours.

Mr. HALLECK. Were you here yesterday when I inquired about the provisions of this proposed legislation that would make the Commission the prosecutor, the complainant, the judge, and the jury?

Mr. RANDOLPH. No; I am sorry to say I did not have opportunity of hearing the gentleman yesterday.

Mr. HALLECK. The pending bill provides, at page 10, in speaking of judicial review, that, except as provided in section 12, orders of the Commission shall be subject to judicial enforcement and judicial review in the same manner, to the same extent, and subject to the same provisions of law, as in the case of orders of the National Labor Relations Board. There has, we all know, been much complaint against the National Labor Relations Board's procedure, as well as complaint against other types of administrative-agency procedure set up to carry out the will of the Congress.

Also it is true that some years ago the House of Representatives by a vote of 2 to 1 adopted a bill providing for certain amendments to the Labor Act which would separate the enforcement and judicial functions of the Labor Board. Did your subcommittee or your full committee give consideration to that matter?

Mr. RANDOLPH. Yes; we gave consideration to the matter of judicial review of actions of the Commission.

Mr. HALLECK. This has to do with more than judicial reviews, Jennings. Under this proposed set-up a complaint is made that there is a discrimination. The Commission files a complaint or charge if it sees fit so to do. I take it that the Commission's lawyers and investigators would gather the proofs, would appear at a hearing to present the evidence, and, after that evidence were introduced, the Commission would decide a case and that decision as to fact would not be reviewable if it be supported by any evidence under the substantial-evidence rule. What I am wondering about is whether or not your committee is of the opinion that such type of administrative and judicial procedure or process is proper and fair and has due regard for the equities of all persons concerned?

Mr. RANDOLPH. I believe so. I believe that anybody aggrieved by a final decision of the Commission will obtain a judicial review of any such orders as the Commission may issue. We know that no penalty is provided for violation of an order of the Commission as set forth in this proposed legislation. However, if a court commands obedience to an order that might be entered, a violation of the court's decree would, of course, be contempt of court and punishable as such.

Mr. MICHENER. The real question is one of fact. As the gentleman from Indiana, Mr. Halleck, has said, it boils down to this: The Commission determines questions of fact, and, having determined them, if there is any evidence before the Commission substantiating the findings of the Commission as to fact, the court is barred from in any way interfering with or changing the decision of the Commission.

If there were a review of the facts before the court, then the court would be permitted to take the evidence, hear all the proofs, and determine where the preponderance of evidence lies.

I quite agree with the gentleman from Indiana, Mr. Halleck, that, if possible, the employers or the employee should have the right to have the facts of his case passed upon by a jury or disinterested person or by one of the courts of the land.

The CHAIRMAN. In that case, all the facts adduced in the trial of a case could be disregarded and the court itself would start de novo.

Mr. MICHENER. Yes; that is true; but it seems to me that under the American system of jurisprudence, one charged with violation of law should have somebody who is impartial, competent, and not the accuser, pass upon his case. The one who prefers a charge in a court, is the district attorney. He presents the case, but he cannot pass upon the guilt or innocence of an accused. The case has to go before a judge, a jury, or some other disinterested agency. I have great faith in the disinterested judgment of a court or an American jury.

The CHAIRMAN. If the Commission should furnish the evidence and it should be presented by the district attorney or the prosecuting attorney, would that eliminate your objection?

Mr. HALLECK. I am sure Mr. Randolph understands me whether he agrees with me or not. The matter of judicial review is in some instances more imaginary than real. If there is any evidence to support the findings of an administrative agency, it stands as a fact and is binding upon a court on review. Whether we do anything about that or not, I have always said, particularly with respect to

the field of administrative law, that this is a matter of tremendous concern to the country, as it should be.

If the substantial evidence rule is to prevail, then clearly the triers of the facts in the first instance should be impartial and not be prejudiced. They should search for the preponderance of evidence, proceeding impartially, rather than being motivated by the prosecutor's instinct or prejudice or obvious responsibility, which is to be partisan in a measure, in the presentation of the case.

Have you in this bill made adequate provision for an impartial determination of facts in the first instance? That is an important question with me. The amendments to the Labor Act would have set up an administrator who would have had the prosecuting functions and the board itself would have acted as the trier of the facts involved in a particular complaint, so that you would have in the same agency the two functions, but they would have been under separate heads, and following in a way, if I may suggest to the gentleman who knows the civil aeronautics law forward and backward, the procedure set out in the first Aeronautics Act, wherein we had an administrator to take care of administration and a board to take care of other duties of the organization.

Mr. RANDOLPH. Yes.

Mr. HALLECK. That was an administration measure.

Mr. RANDOLPH. Do you believe that the rules under which the National Labor Relations Board operates violate strongly the principles in which you believe?

Mr. HALLECK. Certainly at the time the Congress set up the committee to investigate the Labor Board it was in truth and in fact an organization that acted as judge, jury, and prosecutor. The best evidence of that is that two of the three members of the board were not reappointed and confirmed and they are not members of the board at this time.

I think the people of the country are looking to the Congress to see to it that when we undertake to do away with injustices and discriminations and wrongs we at the same time must recognize equities on all sides of a question, and that we do not help anything except as we give to the person charged with violation of law a fair trail by an unbiased, unprejudiced tribunal, with full determination of facts.

I for one am very much concerned about the continuing existence of administrative agencies that have all these various functions which, after all, throughout all our law and all administration of justice in this country have been recognized as something that ought to be separate and distinct in order to make sure that the one against whom charges have been made shall have a trial in a fair tribunal.

Mr. RANDOLPH. I know the gentleman thinks along the same line as the gentleman from Virginia [Mr. Smith] on this subject matter, and as, perhaps, some others think on this committee.

Mr. HALLECK. On that score I am glad if the gentleman from Virginia [Mr. Smith] believes as I do, which I know he does.

Mr. SMITH of Virginia. I have not said a word this morning.

Mr. HALLECK. It so happens that the House by a vote of 2 to 1 felt the same way. I might suggest that possibly the Labor Committee, for which I have a high regard—some times they have not operated to suit me and some times I have not operated to suit them—consider that fact. I am wondering why your committee did not

take cognizance of the vote in the House on this very important subject. And the House may vote that way again.

Mr. RANDOLPH. I opposed that bill before the House. I am not saying I then acted correctly, but I do feel that the evidence that usually affects fair-minded men certainly would be taken into consideration by the proposed Commission.

Mr. MICHENER. I am not so much interested in the evidence as I am in the judge who shall pass on such matters. Regardless of what the evidence is, if the person who passed on it is the prosecutor and the jury and the judge, we are not going to get an unprejudiced decision.

Mr. HALLECK. One further question.

Mr. RANDOLPH. Yes.

Mr. HALLECK. Did the committee give any consideration to the enforcement procedure used by the Pure Food and Drug Administration? That Administration goes into court to enforce its charges or findings on charges.

Mr. RANDOLPH. I do not believe that particular procedure was brought before the committee.

Mr. HALLECK. Such is an alternative for which there is precedent in our administrative procedure at present.

Mr. RANDOLPH. The Commission has set up a proposal, which, if it became law, would request or recommend that the President take appropriate action, complying with any order of the Commission.

Mr. HALLECK. The orders of the Commission become effective and are self-enforcing except as would be considered necessary to enforcing the penalties, you understand.

Mr. RANDOLPH. Yes; that is right.

The CHAIRMAN. In connection with Mr. Halleck's statement, I have always felt that any man should have a right to a fair trial. Many times accused are deprived of a fair trial and some times they are at the mercy of a judge who frequently is harsh, unnecessarily holding people in contempt of court. I have always felt that such was not giving a defendant a fair trial.

I think your committee should give what has been said here yesterday and today very serious and attentive consideration. If you can agree with some of the suggestions that have been made here, or all of them, if possible, and you embody them in your bill, I am sure your bill will meet less opposition.

Mr. RANDOLPH. The gentleman expresses my thoughts. When voting for a bill to come from committee to the floor, I have not wedded myself to every single provision of the bill. I do not know a measure that has come before the Congress since I have been a Member that I have felt myself bound to it in exact language of every provision. I have been for the purpose of such legislation as I have voted to favorably report; and I have always believed that the will of the Congress works on the floor of the House.

Mr. HALLECK. We all know that it is very difficult, if not impossible, to write legislation on the floor. These amendments could be drafted, of course, but they could best be handled in committee.

You have spoken about the duty of members of the Rules Committee, about the necessity for reporting a rule in certain cases. But it can be said, with respect to a legislative committee—and I am proud to be a member of one of the great legislative committees of the House—that these things can best be accomplished in committee.

So far as I am concerned, if I were charged with violation of law, I would want to be tried by somebody who is impartial, disinterested, competent, and have him say whether I am guilty or innocent.

Mr. RANDOLPH. I should like to say for the record that I have made no allegation directly or by implication against the Rules Committee. I said in opening my statement that I believe that after a legislative committee—the Labor Committee in this instance—has gone into a matter, as our committee has this matter, and filed such a report as we have filed, in my opinion it is proper for a bill to come to the floor of the House under an open rule that permits adequate debate.

The gentleman from Ohio has asked me whether I was chairman of the Labor Committee subcommittee. I was chairman of that subcommittee; and the record will show, just as I myself tell you, that I was rather reluctant to assume that subcommittee chairmanship. I believed I was in the position of being for the purposes of this type of legislation.

And now, if I may be allowed 1 minute to discuss an extraneous subject—I have had the active opposition of the Congress of Industrial Organizations, the American Federation of Labor, and the United Mine Workers in both of my campaigns most recently conducted in 1942 and 1944; and I want it clearly understood that the section from which I come, lying as it does south of the Mason-Dixon line, is in some counties intensely southern in feeling, which makes it difficult for me as an individual to act, perhaps, as one of the spokesmen for this proposed measure.

Mr. BROWN of Ohio. As chairman of the subcommittee I presume you are very anxious, and also willing, to better this bill in any way possible.

Mr. RANDOLPH. Yes; I am. But I believe the time has come when we should bring the matter to the floor and attempt to write into the bill any amendments that would refine and make the bill more workable.

Mr. BROWN of Ohio. Continuing along that line of thought. I am much impressed with the idea that if you will study carefully the suggestions of the gentleman from Indiana [Mr. Halleck], you might come to the conclusion that such amendments are desirable and justified, and your active support of them would, perhaps, eliminate any argument about the matter. If you agree to those amendments, perhaps it will save discussion and time.

Mr. RANDOLPH. I feel that, perhaps, there are amendments that may be offered as committee amendments rather than have them accepted by the committee. Probably we would not only go along with, but would sponsor some improvements if the committee thinks wise.

I shall be glad to counsel with the gentleman from Indiana [Mr. Halleck] and other members of the committee in regard to possible amendments and so forth.

Mr. SMITH of Virginia. I want to talk to you along the line Mr. Sabath touched upon. You know my personal regard for you, therefore anything I may ask is not an adverse reflection or implication against you or your committee. You were chairman of the subcommittee that framed this proposed legislation?

Mr. RANDOLPH. Yes.

Mr. SMITH of Virginia. I take it that the full committee probably adopted the bill you framed in subcommittee, did it not?

Mr. RANDOLPH. Yes; that is true.

Mr. SMITH of Virginia. And I think the matters that have been brought to your attention here this morning, in view of the little opposition to the bill before your subcommittee, have caused you to reconsider this matter.

The principles of this bill have been approved by both major political parties in their platforms, therefore I presume something like this bill is going to become law in some form, and I know you want this to be done properly; you want the proper kind of law.

Mr. RANDOLPH. I do, Judge.

Mr. SMITH of Virginia. With that preliminary, I will ask some questions. You have in the bill a provision that one shall not discriminate against a prospective employee on account of creed?

Mr. RANDOLPH. That is true.

Mr. SMITH of Virginia. There are certain religious persons in this country who are conscientious objectors against war. That is recognized. Assuming that I am an employer who believes in the defense of my country and my boys are in the Army, and one who does not believe in defense of his country comes to me for employment, and I have to employ him, because I cannot refuse to employ him even though he is disloyal to our country. That is right, is it not?

Mr. RANDOLPH. Yes.

Mr. SMITH of Virginia. Do you think that is right?

Mr. RANDOLPH. That is difficult question to answer. I do not want to try to answer it quickly.

Mr. SMITH of Virginia. I want to point these things out to you because I know you will give them careful consideration—think seriously about them. I wish you would think about that.

Mr. RANDOLPH. All right.

Mr. SMITH of Virginia. Now let us consider an employer who is a good conscientious Christian, and he likes his employees to be the same, which they are, and an atheist comes along and applies for a job. He is protected by this bill. Do you think that Christian should be compelled to employ an atheist who might be repulsive to his other employees who are Christians?

Mr. RANDOLPH. Going back to your first question, I say that if I were an employer I would not employ a communist if I knew he were one. I would not desire to employ him. Neither would I desire to employ an atheist. But I would have no objection to employing the atheist because I would feel that was a personal matter of opinion with him as to the Divinity. I do not believe that would cause him to be a worse craftsman during the 7 or 8 hours he was at a lathe or machine. I would think of him as a workman and not otherwise.

Mr. SMITH of Virginia. Maybe you would and somebody else would not. Maybe, for instance, I would be a deacon in a church, and I would not want an atheist in my employ, and my other employees would not want to work with an atheist. Should I and my employees be compelled to employ and associate with that atheist?

Mr. RANDOLPH. I think the atheist should be allowed to work in a plant.

Mr. SMITH of Virginia. It is not a question of being allowed to work in a plant. It is a question of his being forced upon an employer and unwilling employees with whom he would have to associate.

Mr. RANDOLPH. It is my feeling that many persons who are very active in the church are no better in actual practice of Christianity than those who do not go to church. I do not think that attendance at church or on the board of laymen is any indication that there is any preferential Christianity in the heart of such an individual. I believe the atheist can work satisfactorily alongside the believer. I think that, because Christianity if strong, the believer will make the disbeliever a Christian.

Mr. SMITH of Virginia. How do you differentiate between the atheist and the conscientious objector? Why is he not just as much entitled to a job in my plant?

Mr. RANDOLPH. There is a difference. With an atheist or a professor of a religious faith that is something personal to him; but when one will not defend his country and mine, there is another element involved, which is very important. I do not believe the two cases are analogous. I cannot see that they are, but I may be wrong.

Mr. SMITH of Virginia. I should like to have you think about that.

Mr. RANDOLPH. I may be in error.

Mr. MICHENER. Let us consider the Mennonites, who are a religious sect. They land in a particular area and establish a settlement of their own faith. They are, fundamentally, Mennonites. They have a right under present law to conduct their project as Mennonites. Would this bill, as drawn, if enacted into law, compel that sect to abandon its project and employ, say, Communists, atheists, Protestants, Catholics, who do not subscribe to the tenets of the Mennonite religion?

Mr. RANDOLPH. I think there certainly would be the working of common sense in a commission when faced by such a problem. The Mennonites work within themselves; they keep unto themselves. They do not mix in employment with other kinds of people. My study would indicate that they live strictly within themselves within the agricultural and the little industrial pursuits they follow.

Mr. MICHENER. The difficulty in drawing a statute is in the possibilities rather than the probabilities inherent. I am asking you whether something is possible under this proposal, not as to your own belief. You assume, of course, that the administrators of the law would act within reason.

Mr. RANDOLPH. You speak about the Mennonite and say he will not defend his country yet our country takes action against him therefor. I believe that is true. When one of that faith refuses to serve his country, nobody objects to his being segregated because he fails to defend his Nation. The Mennonite is protected even in war.

Mr. MICHENER. The Mennonite is protected even in war today, but if you pass this bill and it does what you say it will or can do, the Mennonite will not have the protection as to employees that he has against serving his country in time of war.

Mr. RANDOLPH. I do not think that is any answer.

Mr. MICHENER. He is sincere and wants to do the right thing. He is in an embarrassing situation.

Mr. RANDOLPH. I will give consideration to that. I am not embarrassed. I am delighted to attempt to answer any questions. I think the questions should be in good faith, like my answers, and they have been.

Mr. SMITH of Virginia. Do you think that a Mennonite would have to employ somebody not of his own faith?

Mr. RANDOLPH. Yes; I think so.

Mr. BROWN of Ohio. We have another sect in our country that is very religious, and very industrious, which recognizes Saturday as the Sabbath Day and will not participate in any ordinary business activity on Saturday. If this bill should become law, could the owner or manager of a mercantile establishment, whose heaviest day of business is Saturday, be compelled to employ a person who refused to work on Saturday on account of his religious belief?

Mr. RANDOLPH. Yes. Since you bring up that subject, it so happens that I am a member of the Seventh-Day Baptist Church. We believe the Sabbath is from sundown Friday to sundown Saturday. There are only 9,000 of us in the United States and in the world. We hold to the same day as Sabbath as the Adventists and the Orthodox Jews and are the only three denominations that observe that day as Sabbath.

In the Federal Government it is recognized that an employee should not be required to work Saturdays against his religious belief.

We are getting into a subject matter that should not be discussed, but Sunday is set up in the minds of some persons as a religious worship day and Saturday is set up for the same purpose by other persons.

Mr. BROWN of Ohio. I was interested simply in the business angle of the matter. Perhaps the owner or manager of a store would not want an employee who could not, on account of his religious belief, work on Saturday, the heaviest business day for the store.

Mr. RANDOLPH. An employee who would have a religious preference for a certain day of worship would be so sincere and apply himself to his duties in such a manner that he would compensate his manager or store owner, because the cases of that kind would be very few, for any time lost on Saturdays. The Government views it in that fashion.

Mr. BROWN of Ohio. It is your thought that a business establishment could be compelled to continue to employ an employee who could not, on account of his religious belief, work on Saturday, the heaviest business day of the week for the store?

Mr. RANDOLPH. Yes.

Mr. MICHENER. That would affect production in some manufacturing establishments where there is an assembly line. Every man must be on duty, because he is a necessary link in the chain of production.

Mr. RANDOLPH. As I have said, those who have this particular religious faith rather want to work unto themselves, except in rare instances. In the town in which I was born we observe both Saturday and Sunday as days of worship. It is sometimes said there that we have 7 work days and 2 Sundays; but there is no friction resulting therefrom. The people there have always lived in harmony and understanding. I do not believe that the situation to which my attention has been called would invalidate the proper working of this proposed law.

Mr. MICHENER. As I understand, your subcommittee had many hearings on this proposal and you had the members of this Commission before you

Mr. RANDOLPH. The chairman of the present committee was the only one that testified.

The CHAIRMAN. Have many or any of the conditions you have heard discussed here this morning arisen in connection with the present operation?

Mr. RANDOLPH. There has been no action by the Congress in setting up this program. My answer to the chairman is "no."

Referring to the matter of Executive orders, I will say I think there have been too many of them.

The CHAIRMAN. But the country has not suffered as a result, has it? They have been beneficial, generally speaking, in winning the war with the greatest speed. I think we have done very well with them.

Mr. RANDOLPH. With all our mistakes, we live in a country that is so far advanced beyond any others that I do not believe we need to question.

The CHAIRMAN. We still have the greatest country and the greatest democracy in the world, and our people are better off than are people anywhere else in the world. Is not that true?

Mr. RANDOLPH. These questions have not arisen.

Mr. BROWN of Ohio. But you think this is a great country to stand all the punishment to which it has been subjected, do you not?

Mr. RANDOLPH. Yes; I do. I answer the distinguished Republican.

Mr. SMITH of Virginia. You have frankly said that these questions we have been discussing have not been discussed before your subcommittee, as I understand.

Mr. RANDOLPH. That is right.

Mr. SMITH of Virginia. No doubt you will agree that some of them are very serious questions.

Mr. RANDOLPH. I think so.

Mr. SMITH of Virginia. And I think you will agree, after your long and successful experience in the House, that the floor of the House is a bad place to write legislation. I am going to follow the suggestion of Mr. Sabath—you and your subcommittee and your full committee might very well pause and think whether or not it would be a good idea to withdraw this bill with a view to revamping and improving it. Putting all the cards on the table, as your chairman suggested here yesterday, many members of this committee have no idea of giving a rule on this bill in its present form.

Mr. RANDOLPH. I think that is true.

Mr. SMITH of Virginia. The time has come to be frank about this matter. Mr. Halleck, a member of this committee, was a member of the committee that investigated the National Labor Relations Board.

Mr. RANDOLPH. Yes.

Mr. SMITH of Virginia. We were deeply impressed by the things we found in that investigation.

Mr. RANDOLPH. Yes.

Mr. SMITH of Virginia. The House also showed an interest in that result, because it passed our bill by a vote of 2 to 1. Anybody interested in that matter may refer to House Report 1902, Seventy-sixth Congress, third session.

Mr. HALLECK. The amendments I have been talking about were endorsed and approved in writing by the president of the American Federation of Labor. You probably recall that.

Mr. RANDOLPH. Yes; I recall that to be so. I remember that debate.

Mr. SMITH. There was a letter from Mr. William Green, president of the American Federation of Labor, endorsing that bill in its entirety.

Mr. RANDOLPH. That is right.

Mr. SMITH of Virginia. I mention that report because your bill is framed on the same basis as the National Labor Relations Act, and in the matter of judicial review you specifically refer to the National Labor Relations Act, and say that the present bill shall be entitled to the same judicial review as is provided for the National Labor Relations Act.

I want to discuss the subject of judicial review. A review is not any good unless it is a real review. In the National Labor Relations Act the court is prohibited from reviewing evidence upon which a finding of the Board is based if there is evidence to support that finding. You are not a lawyer, as I remember.

Mr. RANDOLPH. I am not.

Mr. SMITH of Virginia. Quite naturally these points would not occur to you particularly if you have not read the report of our committee on the National Labor Relations Act. The pending bill is like the National Labor Relations Act. All these hearings are for determination of facts that are very difficult to determine. Let us say that you were trying a question of whether A struck B first or B struck A first. There would be eye witnesses to that; but in this matter the sole question for determination by the Commission is the question of a state of mind of the person who is accused. You are deciding what is in that person's mind; and that is not a matter concerning which you can produce direct evidence.

So let us take the case of a Seventh-Day Adventist who applied for a job from a Baptist and he was refused the job after he was asked as to his religion. The employer, let us say, had good reason for not employing him, and he would come before the Board with 10 witnesses who testified that the man was not employed because he was not of good moral character and not a good worker; but the complainant alleges that he was not employed because he was a Seventh-Day Adventist. I am citing a case that is parallel to many such cases we found in our investigation of the National Labor Relations Act. Ten men testify that the man was not discriminated against, and this is a matter concerning the state of mind of the employer, yet the Board finds in favor of the complainant, saying it believes he was discriminated against. It awards him the job and back pay for 6 months he did not work. That is exactly what this bill permits. So the employer says he has not had a square deal; he says he had the 10 reliable witnesses but the Board disregarded them, and he decides to go to court. He wants a review of his case before a judicial tribunal, and he goes to court. The court simply inquires whether there is evidence to support the Board. When it finds any substantial evidence whatever to support the findings, it sustains the Board. It does not depend upon the weight of evidence, it depends upon whether there is any substantial evidence, however small, to sustain the finding of the Board. Hundreds of such cases were brought to our attention in the maladministration of the National Labor Relations Act. In other words the court is precluded from weighing the evidence.

We cannot say whether this proposed Commission will be fairly administered. We should write a law to prohibit such things. In the amendments passed by the House in connection with the National Labor Relations Act we provided that the Board could find nothing except by a preponderance of the evidence; and we further provided that in a judicial review the court could review the facts to see whether or not the findings were clearly erroneous or not supported by substantial evidence.

Mr. Randolph, it was not intended by your subcommittee or full committee in drafting this bill that such a situation as I have just narrated would or could occur under this law, was it?

Mr. RANDOLPH. I believe not. I believe that the membership of the subcommittee and the full committee felt that the Commission certainly would not make a decision upon the opinion or statement of 1 man against 10.

Mr. SMITH of Virginia. In the National Labor Relations Board they did that such customarily. It was a regular practice. They did not pay any attention to the weight of evidence or the rules of evidence. They were not required to do so under the law. Congress, in the fulfillment of its duty, ought not to pass a law that has those kinds of loopholes, and before your committee attempts to bring this bill to the floor, if you expect to be successful and have a good law, you should consider this matter again carefully and make some revisions and consider them in connection with the House action on the National Labor Relations Act.

Mr. RANDOLPH. I will remember approximately the vote in the House; and when the measure went to the Senate what happened to it there?

Mr. SMITH of Virginia. Nothing was done there.

Mr. RANDOLPH. Was there no committee action in the Senate?

Mr. SMITH of Virginia. No.

Mr. RANDOLPH. I am not trying to show anything except that the House action and the failure of the Senate to act.

Mr. SMITH of Virginia. I think it would be informative to your committee to see what defects in that law were pointed out and what action the House took on them.

I have no further questions.

The CHAIRMAN. You have told us, Mr. Randolph, that your committee had before it about 10 or 12 bills of this kind.

Mr. RANDOLPH. Twelve or fifteen bills.

The CHAIRMAN. Introduced by the various members?

Mr. RANDOLPH. Yes; both Republicans and Democrats.

The CHAIRMAN. And your efforts were directed to taking the best of all those bills for the formulation of one good bill, I take it.

Mr. RANDOLPH. We have presented a committee bill.

The CHAIRMAN. You have introduced a composite bill, which is now before us.

Mr. RANDOLPH. Yes; that is correct.

I think we should call attention to the fact that it was the united opinion of the committee that this language, found at page 13 of the bill, should be included. [Reading:]

If, within 60 days after the issuance of any such regulation or of an amendment to any such regulation, there is passed a concurrent resolution of the two Houses of

Congress stating in substance that Congress disapproved such regulation or amendment, as the case may be, such regulation or amendment, as the case may be, shall not be effective after the date of the passage of such concurrent resolution; and after the passage of such concurrent resolution, no regulation or amendment having the same effect as that concerning which the concurrent resolution was passed shall be issued by the Commission.

We felt that the Congress in the last analysis should have the power to set aside any regulation of the Commission. We felt that a Commission would go into uncharted waters, if that is a statement that might be applicable, and that Congress, in its wisdom, not the President, should take final action as to the effectiveness of any regulations.

Mr. HALLECK. Is there any provision in the bill that says the Commission shall inform the Congress of any of its rules and regulations?

Mr. RANDOLPH. I think that is in the bill.

Mr. HALLECK. I do not see it. One would have to check the Federal Register every day, perhaps, to keep up with that. If that provision should mean anything, the Commission should be required to communicate any regulation to the House. That follows the language of the reorganization bill, but that did not mean much in practice. According to the reorganization bill, a plan could be thwarted only by a concurrent resolution of the Congress, but the bill provided the Congress should be informed of changes.

Mr. RANDOLPH. That provision should be in this bill.

Mr. SMITH of Virginia. I referred to the investigation of the National Labor Relations Act, and I want to call attention to the fact that at the time that investigation was made the individual now chairman of the Fair Employment Practice Committee set up under Executive order was publicity director of the National Labor Relations Board at the time this maladministration occurred.

Mr. RANDOLPH. I did not know about his connection with the earlier administration.

The CHAIRMAN. You have given a great deal of study and thought to this matter, and we all know you to be honest, sincere, able. Do you not think you could help prepare amendments that would take care of the criticisms you have heard here today by Mr. Smith and Mr. Halleck. I feel that such would help very much in getting a rule to give the House a chance to vote on this proposed legislation which both major political parties recommended and approved in their last platforms.

Mr. RANDOLPH. I always want to assume a helpful attitude. I cannot speak for the chairman of the Labor Committee, but I will say to you that I will call the subcommittee to meet, of which subcommittee I would still be chairman, I take it, to discuss these suggested amendments.

Mr. HALLECK. In our investigation of the National Labor Relations Act, in view of the fact that the rules of evidence did not apply, it was shown that all sorts of speculation were indulged in.

One of the amendments adopted by the House in connection with the National Labor Relations Act was that the rules of evidence, so far as applicable, should be followed by the agency charged with determining the questions of fact. I have not had presented to me any good reason why the rules of evidence, so far as applicable and so far as they can be applied, should not be applicable in reaching a

finding of fact, which finding is binding upon a court on judicial review.

Mr. RANDOLPH. I want to say in conclusion, speaking for myself only, I have approached this matter objectively, and I am going to do that. I feel, as does Mr. Smith, that many agencies of government are operating with a procedure that was not intended by the Congress at the time those agencies were created. I feel that very deeply. I have so stated and have so voted my sentiments in connection with the creation of the committee which the distinguished gentleman [Mr. Smith] heads. It will be my purpose, as I have said, to call the subcommittee together and learn whether the suggestions advanced here today, and other suggestions, should be considered, whether we give weight to what has been said here.

The questions asked by gentlemen of the committee are not objectionable to me. I might not agree with you in final form, but I hope and believe the questions and observations have been helpful.

Mr. BROWN of Ohio. I think you will agree that if this bill gives the commission the power or the opportunity to be unfair to an employer, in either accepting or rejecting evidence, that some other commission might conceivably be unfair in receiving or rejecting evidence so far as an employee is concerned. It works either way, does it not?

Mr. RANDOLPH. Yes.

Mr. BROWN of Ohio. Therefore you want to prepare the law so there will be a fair determination all round.

Mr. RANDOLPH. Yes; that is the idea.

I want to express my appreciation for the courtesy accorded me by the committee.

The CHAIRMAN. One more question, please. Among the 12 or 15 bills introduced on this subject there is H. R. 700 by my colleague from Illinois. That bill has received consideration of your committee with the other bills, I take it.

Mr. RANDOLPH. You refer to the bill by Mr. Dawson, of Illinois, do you not?

The CHAIRMAN. Yes.

Mr. RANDOLPH. Yes; it was considered with the other 12 or 15 bills.

ADDITIONAL STATEMENT OF HON. CLYDE DOYLE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

The CHAIRMAN. Let us hear Mr. Doyle further.

Mr. DOYLE. I am again referring to the rule of the Supreme Court on substantial evidence. On the question of substantial evidence, the contention here has been that if there is any evidence to support a finding of a commission, a court of review has no power or authority under this proposed law to go back of that finding. The bill before the committee has no reference to the rules of evidence, like the Wagner Act. The Wagner Act says the rules of evidence shall not apply in its operation.

I wish to call your attention to a Supreme Court case, *National Labor Relations Board* v. *Columbian Company* (306 U. S. 292, 300), which says, in speaking of substantial evidence:

> It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

There is another Supreme Court decision in the case *Stork Restaurant* v. *Boland* (282 N. Y. 256), which says:

> This does not mean that the court can substitute their judgment on the facts for those of the administrative agency, but it does mean that the order of such agency must be supported by "substantial" evidence, on the record as a whole.

My position as a member of the American Bar Association for many years so far as the rules of evidence which should govern in matters of this kind are concerned is embodied substantially in S. 7, by Senator McCarran, which bill says, in section 7c:

> Any evidence may be received, but no sanction shall be imposed or rules of order be issued, except as supported by relevant, reliable, and probative evidence.

I want the record to show that I have come back here this morning to answer questions and supplement my statement of yesterday.

Mr. HALLECK. You are, obviously, an able lawyer.

Mr. DOYLE. Thank you.

Mr. HALLECK. Those of us who are lawyers understand that when a judge instructs a jury he tells it to find in accordance with the preponderance of evidence. Do you think that this proposed Commission should in the first instance be governed by the rule of preponderance of evidence?

Mr. DOYLE. I doubt that they should be strictly. I think that such rules before the ordinary commission would be too restrictive. Members of a commission are not necessarily lawyers.

Mr. HALLECK. I am not talking about rules of evidence. I am talking about straight decisions on facts. If you were charged with voting on a measure you would probably first try to decide in your own mind on which side was the greatest evidence of merit. In a criminal case, of course, guilt must be shown beyond a reasonable doubt, which is a higher degree of proof than in civil proceedings, which require proof only in accordance with the preponderance of evidence.

Mr. DOYLE. Yes.

Mr. HALLECK. If a decision of a commission is to go to the court and be sustained under the substantial evidence rule, the decision which you read makes you question what that rule means. I think it means if there is any evidence to support the findings of a commission, those findings will by the court be sustained. In view of the fact that such finality is to be given the decision of an administrative agency, why should that agency not follow the rules requiring proof in accordance with a preponderance of the evidence? I do not mean technically, but according to common sense, in determining on which side the merit rests.

Mr. DOYLE. It should. If preponderanee of evidence gets before a court for review, and the evidence does not sustain it, the decision would be upset by an honest court.

Mr. HALLECK. But under the substantial evidence rule a court upon judicial review would not be allowed to undertake to weigh the evidence. As I stated yesterday, I have serious doubts as to the advisability of having courts review evidence with a view of determining the preponderance of evidence, because that would impose upon a court the necessity of weighing all the evidence. It is the one who tries the case, who sees the witnesses and can therefore evaluate their attitute and demeanor, that has the best chance to accurately determine the credibility of witnesses.

Mr. DOYLE. That is true.

Mr. HALLECK. If we are to follow that rule of judicial review, it ought to be clear to the agency making the first determination that it should determine a case in accordance with the preponderance of evidence. I point that out because I know a case wherein it was shown that an administrative agency making that decision thought it should proceed on the substantial rule of evidence rather than the preponderance-of-evidence rule.

Mr. MICHENER. It is a question of comparative values of testimony.

Mr. DOYLE. If you should read the full decision, I am sure you would be benefited in this connection.

Mr. MICHENER. I have read it. The Committee on the Judiciary, of which I am a member, has had this substantial evidence matter before it many times.

Mr. SMITH of Virginia. I should like to question.

The CHAIRMAN. Very well; go ahead.

Mr. SMITH of Virginia. Mr. Doyle, you have referred to the pending bill in connection with administrative law, S. 7, and I believe you think we should enact some such bill on administrative law. I hope I am right in that conclusion.

Mr. DOYLE. As I stated here yesterday, at what point that should be raised I am not sure, but it should be raised at some point.

Mr. SMITH of Virginia. It is not so much a question of fact that one has been discriminated against, it is a question of the state of mind of the one accused of discriminating. The latter is a very difficult fact to determine, obviously.

Mr. DOYLE. Yes; it is one of the most difficult in law. I would say that if it were only a question of state of mind, that would be very difficult, if not impossible, to prove, but there are other factors involved.

Mr. SMITH of Virginia. Is not discrimination a state of mind?

Mr. DOYLE. A state of mind can be proved by acts also in many cases. It is not only what a man states that shows his state of mind. What he does also shows a state of mind. One shows his state of mind by his acts and his words.

Mr. SMITH of Virginia. Let us say that an employer says that he did not employee an applicant for work because he did not think the applicant was competent to do the job for which a worker was needed, and the applicant says he was not employed because he was a Seventh Day Adventist and would not work on Saturdays. How would you decide that controversy?

Mr. DOYLE. Such a case has no merits upon which a Commission could act. There is nothing of probative value in either statement. It would be ridiculous for a Commission to bother with such a case.

Mr. SMITH of Virginia. Is that not the kind of case, among others, that the proposed Commission would be called upon to handle?

Mr. DOYLE. No.

Mr. SMITH of Virginia. What would the Commission do?

Mr. DOYLE. The report of the existing Committee shows that about 25 percent of the complaints filed with that committee are not heard. I refer to the Committee now functioning under Executive order. Those cases were so frivilous that the committee did not do anything at all with them.

Mr. SMITH of Virginia. Referring to the 75 percent of cases, how were they determined? When the matter is boiled down, was it not, ultimately, a question as to the State of mind of an employer when he declined to hire somebody who felt aggrieved by that action?

Mr. DOYLE. No; not in the sense you are speaking.

Mr. SMITH of Virginia. What was it?

Mr. DOYLE. It was something that could be proved by what the employer said and did—probative evidence, with which you are familiar, the same as I am.

Mr. SMITH of Virginia. There will be in that field, as in every other field, a twilight zone of cases, whether there is evidence of action that conclusively proves a state of mind. That is the question a court would be called upon to review. Do you not think that before we enact this law we ought to be very specific as to what extent a court shall go to in reviewing evidence?

Mr. DOYLE. I call your attention to a section of this proposed measure which I think has been overlooked here. I refer to that part of the bill beginning at the bottom of page 9 which says:

> If upon the record, including all the testimony taken, the Commission shall find that any person named in the complaint has engaged in any such unfair employment practice, the Commission shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair employment practice and to take such affirmative action, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this Act.

Mr. SMITH of Virginia. What does that mean?

Mr. DOYLE. It means just what it says. The Commission shall consider all the testimony and evidence taken.

Mr. SMITH of Virginia. It still does not say what percentage of the testimony the decision must be based upon, whether a preponderance of the evidence or substantial evidence.

Mr. DOYLE. Yes.

Mr. SMITH of Virginia. What do you think it means?

Mr. DOYLE. I do not believe I can answer that before I see the final draft of the bill.

Mr. SMITH of Virginia. This [indicating] is the committee's final draft. Perhaps you can say what kind of review you think there should be.

Mr. DOYLE. The Supreme Court will probably have to make final law, as in other cases. I mean it will have to interpret the act.

Mr. SMITH of Virginia. Do you not think the bill should be specific so that it will not have to be interpreted?

Mr. DOYLE. I am not sure. It is difficult to be specific in drafting legislation. Legislation is largely a matter of experience, of trial and error.

Mr. SMITH of Virginia. Could we not say on what basis these disputes shall be adjudicated, whether according to the rule of preponderance of evidence or the rule of substantial evidence?

Mr. DOYLE. They should not be decided upon a scintilla of evidence, but upon the degree of evidence that will clearly and strongly protect every person accused of violation of law. Whether that should be in connection with this proposal according to substantial evidence or a preponderance of evidence, I am not prepared to say this morning.

Mr. SMITH of Virginia. Do you not think that the Congress itself should fix the basis upon which these disputes shall be adjudicated?

Mr. DOYLE. The substantial evidence rule is not a rule created by statute. It is a judge-made rule not enacted by the Congress. It has grown up by experience and does not necessarily apply.

Mr. SMITH of Virginia. The decision from which you read a little while ago grew out of a suit in which the National Labor Relations Board was involved, did it not?

Mr. DOYLE. Yes.

Mr. SMITH of Virginia. The act speaks of "evidence" and does not say what percentage of the evidence shall govern, as I remember.

Mr. DOYLE. The bill before us does not say what degree of evidence is necessary. The only rule of evidence I know much about, to protect the rights of all concerned, is the rule of preponderance of evidence in civil actions. Whether or not that should apply under this proposed act, I am not prepared just now to say. I want to give the matter more study.

Mr. SMITH of Virginia. You are very frank about this matter; but the point I am trying to make is this: Do you not think the Congress should reach some conclusion as to this particular matter before it enacts this bill?

Mr. DOYLE. Not in committee, I think we should have the benefit of the discussion of all Members of the House, if it is possible to get that, on an important piece of national legislation like this; and I say that with all due respects to any committee. I have great respect for the opinions of many persons, more than I have for the opinions of a few men on a committee. I think the judgment of large numbers is very helpful in forming legislation. That is our only safety valve in legislating—the judgment of many persons.

Mr. SMITH of Virginia. I questioned Mr. Randolph before you came in, and we discussed the question of a conscientious objector. What would result if an employer were willing to defend his country and a man who did not believe in defending his country applied to that employer for work, and the employer had employees who believed in defending their country. The employer and the employees would not want the one who did not believe in defending his country infiltrated among the employees. Would that employer be required to employ that conscientious objector in accordance with the pending bill?

Mr. DOYLE. I do not know.

Mr. SMITH of Virginia. Do you not think we ought to know before we enact this bill?

Mr. DOYLE. No; I do not think you can know the decision of the highest court on that question before it renders a decision.

Mr. SMITH of Virginia. Do you want to leave all to the Supreme Court in this connection?

Mr. DOYLE. I think that many decisions in legislation like this have to come from the Supreme Court.

Mr. SMITH of Virginia. Do you not think everybody should be able to know at all times where he stands, what his rights are, under law?

Mr. DOYLE. No; very few people know their rights fully.

Mr. SMITH of Virginia. Let us consider the case of an atheist. He applies for a job with a Christian employer, and he is refused employment. That atheist goes before this Commission and asks for reinstatement and back pay from the time he was refused employment. The employer looks to the law to see where he stands, but he cannot decide, and he has to wait for an opinion of the Supreme Court, which might take, say, 2 years to get. Then if the decision is against the employer, he will be required to pay 2 years' back pay when the man had not done any work therefor. Is that right?

Mr. DOYLE. The decision would not penalize an employer in the first instance.

Mr. SMITH of Virginia. Are you familiar with the National Labor Relations Act and its administration?

Mr. DOYLE. Yes; not so well as you are.

Mr. SMITH of Virginia. That happened right along in the administration of that law, as was shown by our investigation. It happened not only with a single employee but with large groups of employees where the amount involved was as much as $150,000.

Mr. DOYLE. Only in cases of willful intent to violate the act is there a penalty assessed. I have confidence enough in my Supreme Court to know that any decision of that kind would not carry a penalty. It is only where there is deliberate violation of law that the penalty would be invoked.

Mr. SMITH of Virginia. Should we in this matter tie the hands of the circuit court as in the case of the National Labor Relations Act, so that it cannot review questions of fact?

Mr. DOYLE. True, there must be some safeguard in connection with judicial review, but I have not, as I have said, decided where that should be.

Mr. SMITH of Virginia. In view of the questions you have heard raised here this morning, do you not think that the Labor Committee of the House should give very serious consideration to this whole matter before bringing this bill to the floor of the House?

Mr. DOYLE. Yes; I do.

Mr. MICHENER. Do you not think that the proponents of this bill should be in position to state definitely what the bill contemplates? You have stated, in substance, that in numbers there is safety. I agree with you in saying that; but I cannot conceive of the Congress passing a law without knowing what it means and saying, "Let us leave intent to the Supreme Court."

Mr. DOYLE. As I read the history of Congress and legislation and court decisions, I do not think the Congress has at all times known the effect of legislation at the time it enacted it.

Mr. BROWN of Ohio. It thought it knew, did it not?

Mr. DOYLE. I am not sure about that.

The CHAIRMAN. It would be impossible to write a law that would be construed by everybody in the same way. Shrewd lawyers find defects in this word, this comma, this sentence, this paragraph. Is not that true?

Mr. DOYLE. Yes; that is true.

The CHAIRMAN. And we cannot tell what the Supreme Court will say before it speaks.

Mr. DOYLE. I want to say further, the thing that shocks me as a baby Member of the Congress is the fact that major legislation comes to the floor so suddenly that there is no time to formulate intelligent judgment on it.

Mr. HALLECK. Therefore sometimes the Committee on Rules does a fairly decent job in effecting deliberation.

Mr. DOYLE. There is no opportunity for a Member to study a bill before he is called upon to vote on it.

STATEMENT OF HON. JOHN M. VORYS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

The CHAIRMAN. Let us hear the gentleman from Ohio, Mr. Vorys.

Mr. VORYS. I just want to suggest that your committee might well act promptly on this bill. I would recommend favorable action. By "favorable action" I mean allowing this bill to go to the floor of the House under an open rule sufficiently broad to possibly take care of the grave questions suggested as to the necessity of amendments. In other words, I should like to see opportunity for full consideration of amendments.

I want to refer to the matter of procedure. The bill, having to do with amending the National Labor Relations Act came to the floor in 1941 under an open rule, and that is the way the Smith amendments were heard and adopted. The Committee of the Whole wrote a bill on the floor of the House, which bill I thought was a good one and I voted for it. It passed by a vote of 2 to 1, you will remember.

Mr. SMITH of Virginia. There were no amendments adopted on the floor.

Mr. VORYS. I still feel that that bill was written on the floor of the House in the sense that the bill was considerably changed on the floor.

Mr. SMITH of Virginia. You are mistaken about that.

Mr. VORYS. I do not think I am. That was a bill having to do primarily with a matter within the jurisdiction of the Labor Committee, but it came to the floor in another way. The fair labor standards bill was on the floor 8 days; it was rewritten on the floor and the House recommitted it. The GI bill was on the floor 8 days and was rewritten on the floor. My point is that in a matter of such broad interest and importance as this, where both major political parties have pledged themselves to secure legislation with this purpose in mind, namely, preventing economic inequality based upon race and creed, there is no committee that has a monopoly of knowledge of it. Many matters that come before the Congress are such as demand expert knowledge; but this is a matter about which many of us know something. The Judiciary Committee has great knowledge with respect to matters of judicial review; and other committees are familiar with economic and industrial conditions; and I believe that the only way we are going to get a bill some day is to have it considered and rewritten on the floor to the extent that many different amendments may receive consideration they deserve and are voted up or down. If no action is taken, this bill is out of control of the

Labor Committee. It could write another bill but could not regain control of this bill, unless action be taken by the House.

Although I recognize the seriousness of some questions raised here about this bill, I suggest that the bill be brought to the floor under an open rule providing sufficient time for thorough debate. This open rule would, of course, permit the submission of any proper amendment.

Without going into the merits of the bill or the importance of some sort of action along this line, I merely wanted to take time to make this procedural suggestion.

Thank you.

The CHAIRMAN. It is necessary that the committee adjourn at this time, since the House is in session, to meet next Wednesday.

(Thereupon at 12:20 p. m., Friday, April 20, 1945, the committee adjourned, to meet at 10:30 a. m., Wednesday, April 25, 1945.)

TO PROHIBIT DISCRIMINATION IN EMPLOYMENT BECAUSE OF RACE, CREED, COLOR, NATIONAL ORIGIN, OR ANCESTRY

WEDNESDAY, APRIL 25, 1945

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RULES,
Washington, D. C.

The committee this day met at 10:30 a. m., Hon. Adolph J. Sabath (chairman) presiding, for further consideration of H. R. 2232.

Mr. SMITH of Virginia. We are going to hear the proponents of this bill this morning, are we not, Mr. Chairman?

The CHAIRMAN. We are going to hear Mr. Rivers first.

Mr. HALLECK. I understand that, pursuant to a suggestion made here by various members of the committee, including the chairman, the chairman of the subcommittee of the Committee on Labor that heard this bill was to call a meeting of his subcommittee to discuss the advisability of considering amendments to the bill. I should like to know, before we conclude, what transpired at that meeting of the Subcommittee on Labor.

The CHAIRMAN. I do not know. I have been absent from the city the last few days and just returned this morning.

STATEMENT OF HON. L. MENDEL RIVERS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF SOUTH CAROLINA

Let us now hear Mr. Rivers, who has been here two or three times for the purpose of making a statement.

Mr. RIVERS. Mr. Chairman, in answer to Judge Smith's question, there is no doubt about my position on this pending bill. I oppose it very strongly.

However, at the outset I do want to express my grateful appreciation to you, Mr. Chairman, and the remainder of the distinguished members of the committee for the privilege of appearing here and giving the benefit of my thought as to the desirability and advisability of this proposed legislation.

This proposal is fraught with so many real dangers that it is hard to even approach the subject as outlined in the bill.

At this point I want to commend to members of the committee the masterful approach to, and analysis of this bill by, the distinguished member of the Committee on Labor who filed a minority report, Mr. Fisher, of Texas. Certainly he did not approach this subject with the prejudice and bias many of us are accused of entertaining in connection with such a subject.

Let us say positively that I do not have any bias against any group for any reason in this Nation, but I do say that this proposal is in

most violent conflict with our constitutional rights of life, liberty, and the pursuit of happiness, and it runs headlong into the fifth amendment to the Constitution. The Congress cannot any way in the world pass this proposed legislation in any form and make it constitutional; I do not care if you modify it by a million amendments. You cannot enact this proposal so long as you seek to maintain the American way of life, which means that no law should try to tell an employer whom he must hire.

Recently I had a talk with an officer connected with the War Department about the Ninety-fifth Division, which is a colored organization operating in Italy. There was, you will recall, wide publicity concerning its operations. As a result the President of the United States had an investigation made, and as a result much of the difficulty has been remedied. The report says, among other things, that this particular division received unfortunate publicity. There was also inquiry about the famous Japanese set-up there. There is a large group of Japanese soldiers—our soldiers of Japanese descent—on the Italian front which has won medals. Irrespective of that, do you mean to tell me that an employer any place can be told he must hire a man of Japanese descent? You cannot do that in this country.

There is a most flagrant fallacy and are many false reasons behind this bill. If it should be enacted into law, it will be destructive of initiative, destructive of progress, and would destroy forever any remaining vestige of democracy.

I note in one of the sections of this bill whereby the author or authors scramble to get into it the interstate-commerce feature with the hope that there might be some constitutionality to the legislation, that he or they commit the Congress to the proposition that a diminution of employment would impair and disrupt commerce and would burden, hinder, and obstruct commerce.

This is a flagrant fallacy in the reasoning of this proposed legislation. If an employer were not permitted to hire an individual whom he wants to hire, he would thereby, over a period of time, be liquidating his business, in that his production could never be certain, he would never be sure of the perfection of his product and he would, in effect, be only an agent of the Government competing in a market of inflationary and regimented economy, because the date of the delivery of his product would never be certain and it would be impossible to estimate the price; hence, prices for all products would be inflated and the upward spiral could never be controlled.

The American people have tolerated many regulations during this war. Business and individuals alike have, in the fullest spirit of patriotism, accepted regimentation in the name of the war effort and in the name of survival. Under no pretense or guise would they permit such a practice as this bill proposes to be saddled on the backs of the American people in the name of progress or postwar protection.

If this bill were enacted there would ensue endless court actions, strife, and bloodshed. It would make the endorcement of the Price Control Act and prohibition pale into insignificance by comparison. Its failure would be certain—its effects never forgotten. In short, it would be beyond the ability of human intelligence to enforce. It would rend and tear this country into a million pieces and destroy forever our American representative form of government.

Who is Congress to say who is qualified to fill a position in private industry? Wherein is the Federal Government qualified to dictate what person, firm, or corporation shall hire any individual?

The American people want to see this vast bureaucracy, built up in the name of freedom, dissolved. The American people are confident that the best governed people are the least governed people. The American people have witnessed the reckless expenditure of countless millions at the hands of unqualified, incompetent representatives of this bureaucracy. What the American people want is to be let alone for just a little while.

This bill, if enacted, would make America shorn of freedom and would denude her of free enterprise.

The consideration of a bill of this nature now is untimely. It is wrong in the midst of a great war when unity in every section is indispensable, to embark on a crusade to alter our economy.

The Congress did not declare war to make legislation such as this in order. The men and women on the fighting fronts did not leave home to come back and find this monster awaiting them. I know and you know that it is directed primarily at the South. I know and you know that we do not merit it and our record does not entitle us to this feeling of bitterness and of distrust. If passed, I fear but one course—a terrible civil war which will surpass anything that has happened in all lands since the dawn of civilization.

In closing I want to read to you a statement by a fellow Member of the Congress named Daniel Webster. He came from Massachusetts, from whence Mr. Clason also comes. Mr. Clason has embraced this proposed legislation with hoops of steel around his patriotic idea as to what should be done. Webster said, in speaking before the New England Society in New York City December 22, 1843, more than a hundred years ago:

> This becomes the more important when we consider that the United States stretch over so many degrees of latitude—that they embrace such a variety of climate—that various conditions and relations of society naturally call for different laws and regulations. Let me ask whether the Legislature of New York could wisely pass laws for the government of Louisiana, or whether the Legislature of Louisiana could wisely pass laws for Pennsylvania or New York. Everybody will say, "No." And yet the interests of New York and Pennsylvania and Louisiana, in whatever concerns their relations between themselves and their general relations with all the states of the world, are found to be perfectly well provided for, and adjusted with perfect congruity, by committing these general interests to one common government, the results of popular general elections among them all.

Mr. Cox. The enactment of this proposal into law would in your part of the country and in my part of the country cause a resistance even to the Government, which would be unfortunate?

Mr. RIVERS. Yes.

Whatever is to be done, generally speaking, in the several parts of the country is basically something that rests upon States' rights. The Federal Government cannot embrace all the ideas of the country in matters that are purely local in character. It cannot possibly comprehend the many problems of different sections of the country.

As I said before, so long as the fifth amendment continues to exist you may sit here until doomsday and not approach this subject if you are in accord with the Constitution. By the passage of this bill you would in fact repeal the Constitution.

I strongly advise against favorably reporting this bill or granting it a rule or enacting it into law, because it is badly timed, ill-advised; it can do no good, but will do much harm to every person concerned.

Mr. SMITH of Virginia. No doubt you are aware that both the major political parties have endorsed this proposed legislation in their platforms. You know that, do you not?

Mr. RIVERS. I understand that is true.

Mr. SMITH of Virginia. Now what are we going to do about it?

Mr. RIVERS. I have strong ideas about these particular things and I would rather not get started on some of those things that the party platforms endorse.

Mr. SMITH of Virginia. Have you gone into the details of this proposed legislation?

Mr. RIVERS. Certainly I have. I did not mention any details because I understood Mr. Halleck to say the bill is to be amended before it goes to the floor. Take the part that permits this proposed Commission to——

Mr. COX (interposing). Kangaroos.

Mr. RIVERS. They pick anybody regardless of qualifications and say he must be employed. Mr. Fisher of Texas has masterfully outlined the baneful effects of this proposal. The bill even goes to the extent of abolishing the right of trial by jury. It allows some person, regardless of his qualifications, and sets him up as judge, prosecutor, and jury. Think of such a condition in the United States of America.

Mr. COX. What would this proposal do for the group against which the Congress has on several occasions expressed itself? In other words, this bill provides that an employer may not refuse to employ an individual because of his "creed," which word is a rather elastic one. It does not necessarily mean one's religious beliefs; but it may embrace other beliefs. Do you find in that a solicitude, an evidence of solicitude, on the part of the people who are trying to completely federalize the Government, all government, for this group to which I have referred?

Mr. RIVERS. I certainly do.

Mr. COX. I refer to the so-called Communists and their ilk.

Mr. RIVERS. This proposal would regiment every vestige of any business in the country.

Mr. COX. Do you find in this proposed measure a further proof of a deliberate and systematic plan to build a totalitarian state here in the United States?

Mr. RIVERS. Yes; that is just as true as you live. As I have said, so long as we live under constitutional government, this proposal cannot be enacted into law. There is no constitutional way to enforce such a proposal.

Mr. COX. Do you feel that you are bound by all the planks in your party's platform?

Mr. RIVERS. No; I am bound by the Constitution of the United States and not by every provision of a party platform.

Mr. COX. What would be the reaction of those in the South against whom this proposal is directed, if the party to which they have given allegiance during all these years should force this iniquitous and abhorrent practice upon them?

Mr. RIVERS. Many say that this proposal is directed against the South.

Mr. Cox. Of course it is directed against the South.

Mr. RIVERS. To a great extent, I agree. I try to avoid approaching this subject from the racial standpoint, because they will say I am from the South and all southerners hate the Negroes. That is an erroneous statement. It is even popular in some parts of the country to campaign against the South.

Mr. Cox. What would be the effect of this bill on school boards—private, denominational, and otherwise? Let us take Georgetown University, one of the great universities of our country——

Mr. RIVERS (intervening). I was talking to a former Member of Congress from New York who is a Catholic. He says that in connection with the large schools the Catholics operate throughout the country anybody who felt himself aggrieved in connection with his failure to get a job could under the theory of this bill demand that he be given a job as, say, a teacher, regardless of any other consideration.

Mr. Cox. Let us consider Georgetown University. It has to engage, say, 200 instructors. On June 1 the teachers' contracts expire and the university is under the necessity of giving new employment, and a Negro, or an Indian, or a Chinaman, or a Jew, or a what not, should make application for a job teaching and the university would refuse him employment because he was a Negro, an Indian, a Chinaman, a Jew, or a what not. Under the provisions of this bill would not a complainant have the right to file a complaint with this so-called Fair Employment Practice Commission and on the unsupported statement of the complainant that he was denied employment because of his color or race, would not the Commission be empowered to compel the employment of the complainant?

Mr. RIVERS. Yes; that is as plain as the nose on your face.

Mr. Cox. Take the public-school systems of the several counties of your district, your State has many segregated schools, of course.

Mr. RIVERS. Yes.

Mr. Cox. Let us consider a white school; the board of trustees of your home town may be under the necessity of engaging teachers for the new school year and if some colored person from the community or not from the community should ask for employment and the board would turn him down, these "kangaroos" could come in and compel your board of trustees to give that man employment and if it did not they could subject your board of trustees to all the penalties set up in this bill. Is not that a fact?

Mr. RIVERS. Yes; and they will do just that. It is in the bill.

Mr. Cox. Does that effect harmony among racial groups? is that democracy? is that home rule? is that giving the employer the right to exercise his own judgment as to the fitness and suitablity of his employees? Just where is this thing taking us, I ask.

Mr. RIVERS. This is the most vicious piece of proposed legislation I have ever read.

Mr. Cox. What control would one have over his own business if this group of highjackers may come in and impose this sort of regulation upon responsible employers?

Mr. RIVERS. None. This would abolish everything by way of freedom of action in connection with employment practices.

The CHAIRMAN. What do you mean by "kangaroos" and "highjackers"? To whom do you refer? Identify them.

Mr. Cox. The members of the National Labor Relations Board, who are an aggregation of highjackers and——

The CHAIRMAN (interposing). They were appointed by a President in whom we have thorough confidence; were they not?

Mr. Cox. Yes.

The CHAIRMAN. The President usually appoints men of proper standing and qualifications; does he not?

Mr. Cox. We believe in the President. I would defend him against attack.

Mr. RIVERS. It even commits the Congress to a program of hiring people in the executive branch of government. I never saw such a proposal.

Mr. Cox. Is not this bill a strong bid for the vote of the Negroes in populous communities where they constitute a balance of power?

Mr. RIVERS. I say that this bill is a fraud, because there is no darky in the Nation, I care not what his aspirations are, who can reach the benefits promised in this bill. This bill is in fact a fraud against the Negro race rather than a real effort to do something helpful for it. We could not do nationally what this bill claims to do, unless we take the United States Army, the Marine Corps, the Navy, the Coast Guard, and perpetrate things like they do in the horror chambers of current Germany.

I would rather forfeit my seat in the Congress than be a party to this nefarious proposal. Many persons would not give a ticket to heaven for what some others would do to remain in the Congress; and that is unfortunate.

Mr. Cox. Let us consider a man employing six workers. The bill aims to establish and promote a close social relationship among that help.

Mr. RIVERS. I do not know all the things it proposes to do. As I said before, it would abolish trial by jury; the rules of evidence would be thrown out the window; the unsupported allegation of a complainant would prevail. Shall the Congress be told that it must go out and embrace the philosophy of those comprising the Fair Employment Practice group?

This proposal is something new. We have not made one person or agency judge, jury, and prosecutor. Again, this bill does not protect against unlawful search and seizure. One's property could be seized without warrant, taken away, and used as evidence against its owner. I do not know where we shall go if we do that. Moreover, this bill would destroy any protection for minorities. This is the most weird piece of proposed legislation I have ever looked at. It is undeed misfortunate that such should be proposed seriously.

I would rather be outside of Congress than to remain here and remove one grain of sand from the cornerstone upon which rests our constitutional Government; and a vote for this bill is a vote for the erosion of that monument; this is the wind that will blow it down.

The CHAIRMAN. Have you given consideration to the fact that 12 members of the Committee on Labor signed the favorable report covering this bill? No doubt they understood what they were doing when they signed that favorable report.

Mr. Cox. No; the Committee on Labor is here asking for a rule to cover a bill that the members of that committee did not understand. We have had repeated evidence of that. One witness from

that committee was under the impression that the bill afforded trial by jury. Another witness from that committee was under the impression that the bill provides for an application of the rule of preponderance of evidence; and the author of the bill, who is also chairman of the Committee on Labor, said she would be for the bill, no matter what it might do.

The CHAIRMAN. They did not say they did not know what was in the bill. The subcommittee conducted hearings on the bill, and the bill was gone over at last by the full committee, as is the usual practice.

Mr. COX. Members of that committee have here stated that they did not understand the bill.

Mr. RIVERS. I do not want to impugn motives, but anybody who seriously——

The CHAIRMAN. We have a right to differ.

Mr. RIVERS. Certainly.

The CHAIRMAN. We always have the different viewpoints. After a man has heard the testimony on a bill and given it mature consideration, I do not believe that we should charge him with un-Americanism and say he wants to destroy our Constitution just because we do not agree with him.

Mr. RIVERS. No.

The CHAIRMAN. Perhaps they had in mind how this practice has worked out under the Executive order which carries the provisions of this bill, or most of them. Under that operation there was not a great deal, if any, harm done, and no doubt that operation has been and is conducive to law and order. And no doubt those members will be willing to accept safeguards that will make this proposal work satisfactorily.

Mr. RIVERS. The Fair Employment Practice Committee did not affect Charleston, where we have a shortage of manpower. Any man with arms and legs who wants to work can get it in Charleston. At the navy yard there we have 30,000 employees, and we are glad to get workers of all kinds. The colored man there gets his $1.20 an hour the same as does the white man.

The CHAIRMAN. There is no trouble.

Mr. RIVERS. There is not; but I tell you most positively that this Congress cannot enact legislation telling employers whom they must employ so long as we have a constitution.

The CHAIRMAN. I am afraid you overlook the objectives, or many of them, in this bill.

Mr. RIVERS. I have carefully analyzed this bill, and I think I know what it contains and its possibilities.

The CHAIRMAN. It provides against discrimination in employment on account of race, creed, color, national, origin, or ancestry.

Mr. RIVERS. It tells employers whom they must employ. Anybody who alleges he has been discriminated against because of race, color, creed, and so forth, can file a complaint with this proposed Commission, and it will hear the case, not according to the rules of evidence, as prosecutor, judge, and jury, and pass sentence. To make this bill workable we would have to amend the Constitution.

The CHAIRMAN. One who feels himself aggrieved may go to the circuit court.

Mr. COX. He may not go to the circuit court or any other court of review to get a hearing on the facts. The review will determine

whether a case was heard according to rules prescribed by this Commission. There is under this bill no possible court review of questions of fact. The complainant himself will prevail against any number of credible witnesses for the alleged offender.

Mr. RIVERS. This bill is potentially very dangerous. So far as party platforms are concerned, I think that they are sometimes things candidates wish to ride into the White House on.

Mr. SMITH of Virginia. So long as we are going to have to have this kind of legislation protecting persons from discrimination on account of race, creed, color, national origin, or ancestry, do you know why the Labor Committee should have discriminated against sex? Why not protect women also if we protect races, creeds, colors, national origins, and ancestries? Do you see any reason for a failure to protect women?

Mr. RIVERS. The women of this country appreciate they are going to have equality probably by an amendment to the Constitution. I know that every Member of the Congress has had somebody talk to him about the equal rights bill, or whatever else that bill is called. They are going about effecting equality in the right way.

Mr. MICHENER. Are you for equal rights?

Mr. RIVERS. I think so.

Mr. MICHENER. If you are for equal rights—the proposed equal-rights amendments to the Constitution—why would you object to including sex in this bill? You know it takes quite awhile to get a constitutional amendment through; you know that the Senate Committee on the Judiciary has indicated publicly that it will not consider constitutional amendments during the war.

Mr. RIVERS. I do not object to it.

You are a good lawyer, Mr. Michener, and everybody in Congress knows that; and you know we cannot under any guise bypass the Constitution and enact legislation of this sort without violating the Constitution.

Mr. COX. Bypassing the Constitution has become a pastime

Mr. RIVERS. But maybe they will not be so bold as they are. The day for the Congress at the whipping post may have passed. We have got to get back to realities; we cannot continue to look into the sky all the time. We shall have to get down to earth and do so reasonably soon. We have tolerated many unwholesome things in the name of democracy, but that habit must be arrested.

The CHAIRMAN. Still, we have gotten along very nicely, do you not think? We have the greatest freedom of opportunity there is in the world, notwithstanding your implications.

Mr. RIVERS. Just because we have it is no reason why we should take it away. That is exactly what would be done by this bill. Every businessman in the country should be against this bill.

Thank you.

The CHAIRMAN. I have just received the following letter from Mrs. Norton

HOUSE OF REPRESENTATIVES,
COMMITTEE ON LABOR,
Washington, D. C., April 25, 1945.

HON. ADOLPH J. SABATH,
Chairman, House Rules Committee,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: It has been reported to the House Labor Committee that certain amendments have been suggested by some members of the Rules Committee which, in the opinion of the Rules Committee, should be adopted.

At an executive session of the Labor Committee this morning, I brought this subject to the attention of the members, and it was discussed extensively. The overwhelming decision of the committee is that the bill be brought to the floor as it is, so that it may be discussed fully and, if the House so decides, amended.

It is the desire of the committee that an open rule be granted in order that the membership of the House may be given adequate opportunity to discuss the bill and, in its good judgment, amend it if necessary. Feeling that 2 months is sufficient time for a rule to have been granted, the committee is most anxious that a rule be voted upon today.

With every good wish to you, I am,

Sincerely yours,

MARY T. NORTON.

Mr. SMITH of Virginia. I take that to mean the Committee on Labor is in favor of this bill as it is written, notwithstanding all that has been said at our hearings on this bill.

The CHAIRMAN. The Committee on Labor wants an open rule so that the bill may be amended on the floor of the House, if that is desired.

Mr. SMITH of Virginia. That is true of any bill under an open rule. The question confronting us is whether that committee is going to present a perfect or an imperfect bill, and some of its own witnesses have conceded the weakness of this pending bill. Mr. Randolph here stated that many of the questions raised here had not been called to his attention.

Mr. HALLECK. Are there any members of the Committee on Labor present who favor enactment of this bill?

Mr. SMITH of Virginia. I should like to question other members of the Committee on Labor. Mr. Baldwin of New York submitted, through the chairman of the Committee on Labor, a written statement.

Mr. HALLECK. I hold in my hand a little book entitled "Platforms of the Two Great Political Parties." It was issued by Mr. South Trimble, Clerk of the House. At page 423 I observe this paragraph from the platform of 1944 adopted at Chicago by the Republican Party:

> We pledge the establishment by Federal legislation of a permanent Fair Employment Practice Commission.

I was not a delegate to that convention and did not participate in the drafting of this platform, but that is the announced position of my party.

Again I find, at page 416 of this same book, this sentence, under the heading of "Labor." This is the Republican platform. It says:

> The continued perversion of the Wagner Act by the New Deal menaces the purposes of the law and threatens to destroy collective bargaining completely and permanently.

Obviously, that platform, speaking for the Republican Party, pledges the establishment by Federal legislation of a permanent Fair Employment Practice Commission, but there was no definite indication as to the precise details of the legislation that might be adopted. What I am trying to get at is this—and I am speaking for myself only—I participated in a congressional committee investigation of the administration of the National Labor Relations Act by the Board as it was then constituted and the employees of that Board. I think it is fair to say that the workings of that adminis-

tration had become thoroughly obnoxious to the people generally of the country. Reference has here been made to some things learned in the course of that investigation. However that may be, and being cognizant of the fact that this measure now before us is drafted exactly on the pattern of the National Labor Relations Act and in certain provisions adopts certain parts of that act—they are incorporated in this bill without recital—it would seem to me that those in charge of this proposed legislation might well understand and know that after that investigation two of the three members of the Labor Board were not reappointed to their positions on that Board, which seemed to me to be conclusive evidence as to administration by that Board. I feel sure that those two particular gentlemen would not have been confirmed by the Senate.

After that investigation some amendments were proposed to the so-called Labor Act. They came from that special committee, and I joined in proposing them. They were endorsed by the president of the American Federation of Labor, and I think by other persons generally.

The chairman of the Committee on Labor has seen fit to lecture the members of the Committee on Rules, but I think, before the hearing of the other day was concluded, she indicated that some of us as individuals are not too bad. Anyway, we might recall that at the time those amendments were drawn up there was an absolute failure on the part of the Labor Committee to submit any amendments for consideration of the House of Representatives. The chairman of our committee will recall that a measure came here by which those amendments to the Labor Act were made germane. Those amendments went to the floor of the House and were thoroughly debated; and, if my memory serves me accurately, certain members of the Labor Committee, including the chairman of the Labor Committee, opposed those or any other amendments to the Labor Act. Anyway, after that debate and consideration by the House it voted 2 to 1 to adopt those amendments to the Wagner Act, which amendments were designed to alleviate or at least diminish or eliminate completely certain errors of administration—the injustice in administration, the discrimination in administration that had shown up so flagrantly.

Speaking for myself only, if the Labor Committee wants this bill to go to the floor as it is, wants the House to consider this bill as it is, the House having once spoken by a vote of 2 to 1 as to amendments that should be written into the Labor Act—I do not know how many will stand with me—I am going to be for some of those amendments.

I think the time has come when we should recognize that it does not make for good administration to make an agency the investigator, prosecutor, judge, and jury. I think the time has come when we should require a commission such as is here proposed to decide matters that come before it according to the rule of preponderance of evidence.

We are hearing a lot about the impending San Francisco Conference. I observe that the Chinese have suggested that justice be written into the Dumbarton Oaks agreement and that justice and equality of law should be written into whatever is set up at San Francisco. I feel strongly that justice can well be applied in our affairs at home and in the administration of our laws. Assuming the worthy objectives of this proposed legislation, and recognizing that anything I may say will have little weight with the Labor Committee, it seems

to me that it would be much better to do something about the form of this bill to assure that bad administration may not follow, if this bill follows the pattern of the National Labor Relations Act, and cause a revulsion of feeling such as we had against the Labor Act. I hope the Labor Committee will take these remarks into consideration. It is a committee of the House, and on these matters the House has spoken once. So far as I can discern, there is no difference in the attitude of the House now.

The CHAIRMAN. The House should have the right to work its will. If it adopted such amendments as are proposed now in connection with the Labor Act, is it not logical to assure that it will do the same in this case?

STATEMENT OF HON. CLARK FISHER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

The CHAIRMAN. Let us now hear Mr. Fisher, of Texas.

Mr. FISHER. Mr. Chairman and members of the committee, I am sure it will not be necessary to take much of the time of the committee. However, bearing in mind what the chairman has just said and what the gentleman from Indiana has said, I think it is well to point out the provision in the bill that sets up a system whereby the judge, the jury, and the prosecutor would be the same, is but one of many objectionable features of this measure.

The CHAIRMAN. I do not know whether you were here at our last meeting when I agreed with Mr. Halleck in advocating that particular amendment, and expressed a hope that it would be adopted.

Mr. FISHER. I think it is admitted by all who are sympathetic toward this bill, including the gentleman from California [Mr. Doyle], who is author of a bill on this subject that was considered by the Labor Committee, that one agency or person should not be judge, jury, and prosecutor. Mr. Doyle stated he thought that should not be. Few would say that sort of thing should be tolerated in connection with these vital issues that will affect property rights of millions of people. It is generally agreed that part of the bill should be rewritten. As I have said, several sponsors of the bills before the Labor Committee on this subject agreed that those changes must be made. That is one thing upon which there is agreement.

It has been agreed that the provision requiring the proposed Commission to hire the incumbent personnel of the Fair Employment Practice Committee should be stricken. I think Mr. Randolph agreed that such provision should be stricken. That was conceded by others who have spoken here, as I remember.

Mr. HALLECK. That is covered at page 7 of the bill, where it says that—

> When three members of the Commission have qualified and taken office, the Committee on Fair Employment Practice established by Executive Order Numbered 9346 of May 27, 1943, shall cease to exist. All employees of the said Committee shall then be transferred to and become employees of the Commission, and all records, papers, and property of the Committee shall then pass into the possession of the Commission.

It seems to me that such is a departure in legislation. The Commission might want to hire its own staff.

Mr. SMITH of Virginia. Did the Labor Committee have any precedent for that provision of the bill?

Mr. FISHER. I understand that is without legislative precedent. If this bill is adopted as written, each member who gives assent to the bill is personally endorsing the hiring of every person now employed by the Fair Employment Practice Committee by this proposed Commission. Congress would be doing the hiring of these employees rather than letting the Commission do that. As I have said, the gentleman from West Virginia agreed that such provision should be stricken. He also agreed that no bill should require the hiring of a conscientious objector—that no conscientious objector should receive the protection of this bill. He agreed to that in answer to a question by Mr. Smith, as I recall.

As I sat here and listened to the statements of those members of the Labor Committee, it occurred to me that many provisions in the bill had escaped the attention of sponsors of these bills, and which it is agreed generally must come out of the bill.

As I understand the procedure, it is the primary duty of a legislative committee to write the best bill it can under conditions of calmness and deliberation; and I think the only proper thing for the Labor Committee to do is to take this bill back to committee, resume hearings and rewrite a bill.

There is more than one amendment involved. The entire bill must be rewritten. Let me give you one or two examples.

Mr. SMITH of Virginia. May I interrupt the gentleman?

Mr. FISHER. Yes.

Mr. SMITH of Virginia. As I gathered from the members of the Labor Committee who appeared here, there was very little opposition to tne bill neard in subcommittee. Is that true, if you know?

Mr. FISHER. Yes; that is true, there was no opposition heard.

Mr. SMITH of Virginia. Were the questions that we have raised and to which you are referring brought out before the Labor Subcommittee?

Mr. FISHER. No; many of them were not.

Mr. SMITH of Virginia. Those who desired to analyze this proposed legislation and reveal its deficiencies never had an opportunity to be heard, as I understand; is that true?

Mr. FISHER. That is correct. A number of witnesses have said here it had not occurred to them that the bill would have the effects pointed out here. Mr. Doyle, author of one of these bills, said here that the matter of having the same man or the same agency for judge, jury, and prosecutor was unthinkable. Yet that very provision is in this bill. Mr. Doyle had not given thought to that matter.

Mr. SMITH of Virginia. Was that because any opposition to the bill was not heard?

Mr. FISHER. Yes; I am sure that is true.

Mr. HALLECK. Were you present at a meeting of the Labor Committee yesterday?

Mr. FISHER. No. I did not receive any notice of such a meeting to consider this bill.

The CHAIRMAN. I think the meeting took place this morning.

Mr. FISHER. I did not get notice of any such meeting.

Mr. HALLECK. I understand the meeting of the Labor Committee was yesterday.

Mr. SMITH of Virginia. Are you a member of the Committee on Labor?

Mr. FISHER. I am.

Mr. SMITH of Virginia. You do not mean to say that you did not receive any notice of that committee meeting.

Mr. FISHER. I do. This is the first information, directly or indirectly, I have received about such a meeting of the Labor Committee to give further consideration to this bill.

Mr. HALLECK. I looked at the Washington Post yesterday morning to see what committees of the House and the Senate were to meet yesterday, Tuesday, and, if my memory serves me correctly, it said that the Committee on Labor, or it may have said a subcommittee of that committee, would meet at 10:30 Tuesday morning for consideration of the fair employment practice bill.

If the facts are disclosed, I think it will be found that Mr. Randolph called a meeting of his subcommittee, whereupon the chairman of the whole committee rather vehemently objected to any such action, whereupon, as I gather it, the meeting of the subcommittee was recessed; and nothing whatever happened.

Mr. FISHER. I know nothing about that.

Mr. HALLECK. Were you, Mr. Fisher, a member of the subcommittee that considered this bill?

Mr. FISHER. No; I was not.

Mr. SMITH of Virginia. The letter from the chairman of the Labor Committee just read says "at an executive session of the Labor Committee this morning," meaning today, Wednesday, which is the date of the letter.

Is it customary for the Labor Committee to hold meetings without notifying all members of that committee of such meetings?

Mr. FISHER. I am unfamiliar with the practice in that regard.

Mr. HALLECK. I suggested to Mr. Shaw that he might, if he could do so with due propriety, call the clerk of the Labor Committee to learn just what did happen, and he reports that the clerk of the Labor Committee says that notice was sent out last Friday for a meeting of the committee this, Wesdneay, morning, which meeting was held.

Mr. FISHER. I myself did not get any notice of that meeting, except a notice "For the consideration of H. R. 525."

I do not believe that section 4 of the bill has been touched upon. It says:

> The right to work and to seek work without discrimination because of race, creed, color, national origin, or ancestry is declared to be an immunity of all citizens of the United States, which shall not be abridged by any State or by any instrumentality or creature of the United States or of any State.

I think this provision will stand a little analyzing. That simply means, as I see it, that the Congress is saying that no State in the Union may carry on any form of employment that discriminates on account of race, creed, color, national origin, or ancestry. That includes States' highway departments, States' boards of control, and counties.

Mr. SMITH of Virginia. How about State universities?

Mr. FISHER. They are included. It means police departments, school boards, and all other instrumentalities of the State. It means private corporations, because they are creatures and instrumentalities of the State, in that they operate by virtue of charters granted by the States. Therefore the few lines of section 4 carry lots of meaning and

cover lots of territory. This is one of the provisions that, in my opinion, is untenable. Surely the Congress does not want to see a Federal bureau in Washington control employment in connection with every school board in America. There is no end to the jurisdiction that might be conferred through interpretation that will probably be made of that particular provision of the bill.

Mr. HALLECK. Is there not a similar provision in the National Labor Relations Act having to do with unfair labor practices?

Mr. FISHER. I do not know.

Mr. MICHENER. Would this proposal eliminate the possibility of choice in the matter of employing a minister for a church?

Mr. FISHER. I would say that if the church should come within the jurisdiction as it is described here of the proposed Commission, certainly the Commission could determine the employment of a minister for a church.

Mr. SMITH of Virginia. The Episcopalians would have to employ a Methodist minister; would they not?

Mr. FISHER. Many churches are creatures of the States in that they are chartered, and they could therefore be subject to the jurisdiction of this Commission.

Mr. BROWN of Ohio. Would the section to which you referred apply to any private intrastate operation or business?

Mr. FISHER. This bill does not place any restriction at States' lines.

Mr. HALLECK. I think that same provision is in the Wagner Act.

Mr. SMITH of Virginia. No; it did not go so far.

Mr. HALLECK. I do not believe it included a State or subdivision of a State.

Mr. FISHER. That is just one of the many provisions in the bill that I think are too far-reaching and which one might not catch on first glance in running through the bill.

I was interested the other morning when Mr. Randolph responded to Mr. Smith's question about employing a conscientious objector and other examples given. As I listened, another example occured to me.

Suppose this bill should be enacted into law, and after the war is over suppose a veteran of Iwo Jima comes back and borrows money under the GI bill and goes into business in California. Suppose he comes within the provisions of this proposed law, having more than five employees, and he tries to make a success of his business. He advertises for an additional employee, and a Japanese applies for the job. The veteran tells him, "No, I am not going to hire you; I do not like the Japanese; I fought them at Iwo Jima, and my impression of them is bad; I would rather see you work for somebody else; I don't want to hire you." Some might say that is un-American. I don't think so. Let us assume that the veteran feels that he has what he considers a sound reason for not employing that Japanese.

Mr. SMITH of Virginia. The veteran might be one who was a prisoner on Bataan.

Mr. FISHER. Yes. Anyway, he had developed that attitude of mind toward a Japanese. The Japanese who applies for the job is properly qualified but the veteran will not hire him because he does not like Japanese. Obviously, the veteran has discriminated against the Japanese because of his race. The next day the veteran's buddy who had also served in Iwo Jima applies for that job refused the Japanese and he is hired. Thereupon the Japanese files a complaint

with the Fair Employment Practice Commission. What is the Fair Employment Practice Commission going to do about it? There is a strong case of discrimination; there is no question about that. The Congress would by this bill set up a condition that will force the veteran to hire that Japanese regardless of its effect on his business and on his feelings and the loan he obtained under the GI bill. That is one striking example. Thousands and thousands of such cases will come up all over this Nation.

I think the matter of appeal has been covered. I think it is generally agreed that there is no real right of appeal from the action of this proposed Commission. If there is any question about that, I should like to develop it, because that is true. All the Commission has to do is make out a rpima facie case; and a prosecutor who cannot make out a prima facie case cannot get in out of the rain. He should be displaced. The Commission would make a prima facie case, and that would be the end of it. The aggrieved may appeal, on questions of law only, and it would take a year to go to the circuit court, which may be a thousand niles away. In my section of the country our circuit court is in New Orleans, a thousand miles away. All the time this appeal was pending there would be an accumulation of penalty against the appellant on account of back wages if he lost, and he would lose. It would not avail anything to appeal. If an appellant should win, another complaint would likely be filed against him the next week. In short, the right of appeal spoken of in this bill is completely meaningless. I think everybody agrees with that statement.

Mr. SMITH of Virginia. Referring to employment by school board, in Virginia we have the Randolph-Macon schools, which are very good indeed. They are operated under the auspicies of the Methodists. They employ more than five persons, therefore they would come under the provisions of this bill. Suppose an atheist comes to that school and wants to be employed as an economist. Assume, further, that he is able, that there is no question as to his capacity and ability. The head of the school says to that atheist applicant, "No, I do not want an atheist; we teach religion to our scholars; we do not want an atheist teaching that there is no such thing as God." Then the atheist writes a letter to this Fair Employment Practice Commission alleging that he is discriminated against on account of his religious beliefs.

Mr. FISHER. Yes.

Mr. SMITH of Virginia. That would be an open-and-shut case against the institution; would it not? It, no doubt, is discriminating against this applicant.

Mr. FISHER. Yes.

Mr. SMITH of Virginia. That institution would be guilty of having violated this act; would it not?

Mr. FISHER. Yes.

Mr. SMITH of Virginia. There is no question about that.

Mr. FISHER. There is no question about that.

Mr. SMITH of Virginia. Let us consider the State institutions. Let us go to the heart of this matter, the question of the colored people. In the Southern States there is a considerable amount of segregation among the races. It is the experience of those in the South that such practice is a desirable one. Let us say we have a white university.

Its teachers are all white, and a colored teacher applies for employment in that university. The university writes him, "We are turning down your application because we have only white teachers in our institution." That would be an open-and-shut case of discrimination by that institution, would it not?

Mr. FISHER. It would.

Mr. SMITH of Virginia. And the State that operates that institution.

Mr. FISHER. Yes.

Mr. SMITH of Virginia. There is no question whether they went to court. There is nothing they can do. They are convicted before they start.

Mr. FISHER. If the Commission should carry out the mandate of Congress, it would force the employment of the colored teacher.

Mr. SMITH of Virginia. There is no question about those cases, is there?

Mr. FISHER. No; none.

Mr. ALLEN of Illinois. Would that be true of parochial schools hiring Sisters; if they had five teachers would they be subject to the provisions of this bill?

Mr. FISHER. No; they are not creatures of the State. The parochial school would not be affected, because it has no charter from a State. However, such schools might well be held to be engaged in interstate commerce, and therefore covered.

Most everything, every business and operation, would be subject to this bill if engaged in interstate commerce, as most businesses are.

Mr. SMITH of Virginia. And you agree, no doubt, that under the current decisions of the Supreme Court practically every activity is interstate commerce or affects interstate commerce.

Mr. FISHER. Yes. The Supreme Court has gone so far as to hold farming, raising potatoes, to be interstate commerce, if those potatoes are sold and they move across States' lines.

Mr. COX. Planting the seed in the ground is interstate commerce according to current decisions of the Supreme Court.

Mr. FISHER. Yes; that is held to be interstate commerce. Farmers employing more than five men would in many cases be subject to this proposed law.

Mr. SMITH of Virginia. In the National Labor Relations Act there is an exemption for agriculture.

Mr. FISHER. But there is no such exemption in the pending bill.

Mr. SMITH of Virginia. This bill would apply to agriculture also, you say?

Mr. FISHER. Yes.

Mr. SMITH of Virginia. If a man were operating a farm and employing his boys and girls and employed other help, so that the total number were more than five, and a Japanese should come along and seek employment with the employer's sons and daughters, the employer would under this proposed law be required to employ that Jap.

Mr. FISHER. Yes; if he wished to comply with the law.

Mr. SMITH of Virginia. And the same would apply to an atheist, a Seventh Day Adventist, or any other sect, would it not?

Mr. FISHER. Yes.

Mr. SMITH of Virginia. Do you know why the Labor Committee in drafting this bill against discrimination in employment did not provide against discrimination on account of sex?

Mr. FISHER. No. Women are not afforded protection against discrimination by this bill. Any number of other groups are not protected against discrimination. I now refer to the question of whether this bill, would by implication, repeal the provisions of the laws passed by the Congress concerning job preferences for veterans. I understand it is provided in the Selective Service and Training Act that veterans are given a right within 60 days of discharge to reapply for their old jobs. In addition to that, the Starnes Act affords veteran preference in employment by the Federal Government. Several States have such laws giving preference to veterans, such as employment in the States' highway departments. I think that preference applies to the roads bill Congress passed, covering postwar road construction. How would this proposal affect all those enactments?

How would it affect the situation if Congress passes a law at this hour saying that it shall be an unfair employment practice for the purposes of this act for any employer to refuse to hire any individual—veteran or nonveteran, anybody else—because of such individual's race, creed, color, national origin, or ancestry?

There is no express repeal of those preceding laws I have mentioned, but, as I understand law, an act may be repealed by implicatoin as effectively as by direct action.

Suppose a veteran comes along and applies for a job and the Commission says, "No; here is a member of a minority race who has applied for the same job and he has been discriminated against on account of color." The veteran says, "But I am protected under the job preference law." The rejoiner would be, "You think you are; the Congress passed a later law superseding the law that protected you in your job. We are controlled by whether you have been discriminated against on account of color, creed, race, national origin, or ancestry." There is a serious question as to whether there is a repeal by implication where there is a conflict that cannot be reconciled.

There are many other provisions of this bill that I should like to talk about that I think most people will say, if they get down and study them, are not good provisions of legislation and cannot be defended.

Mr. SMITH of Virginia. Do you know who the members of the subocmmittee were that drafted this bill?

Mr. FISHER. The members of the subcommittee drafted the bill. I do not know their names.

Mr. COX. Where did this bill come from, if you know?

Mr. SMITH of Virginia. I am wondering which members of the subcommittee that drafted this bill are lawyers. The chairman of that subcommittee is not a lawyer.

Mr. FISHER. I doubt that there was a single lawyer on that subcommittee. Probably that accounts for the bad condition of the bill today.

Mr. HALLECK. Lawyers are presumed to be persona nongrata now, are they not?

Mr. FISHER. This bill was originally introduced by Mr. Scanlon of Pennsylvania last year. The bills introduced at the beginning of this session of the Congress are almost word for word in accordance with the Scanlon bill. Mrs. Norton's bill was slightly different. It was changed after the Attorney General held the Scanlon bill unconstitutional in a written opinion to the chairman of the Labor Committee.

That opinion is not in the record of hearings, but I have a copy of that opinion. In an attempt to correct the constitutional provisions of the Scanlon bill there were a few changes made.

Mr. HALLECK. Do you say that the opinion of the Attorney General was not made a part of the record of hearings on this bill?

Mr. FISHER. It is not a part of the hearings.

Mr. SMITH of Virginia. Why was it not made a part of the hearings, if you know?

Mr. FISHER. I do not know.

The CHAIRMAN. As I understand, upon advice of the Attorney General that some provisions of the Scanlon bill were unconstitutional, and all bills followed the same pattern, effort was made to change those provisions and bring them within the constitution; is that true?

Mr. FISHER. Personally, I do not think they were corrected.

Mr. SMITH of Virginia. Has this bill been submitted to the Attorney General, if you know?

Mr. FISHER. It has not, so far as I know.

Mr. SMITH of Virginia. Your committee or subcommittee has not had any advice as to the constitutionality of the bill? I mean as the bill is written.

Mr. FISHER. No; not that I know of.

Mr. HALLECK. I would like to see a copy of the opinion of the Attorney General covering the Scanlon bill.

Mr. FISHER. I can get it for you. I was told that the opinion was not to be printed as part of the hearings.

Mr. HALLECK. I should like to see that opinion.

The CHAIRMAN. Did other members of your committee get a copy of that opinion?

Mr. FISHER. No; I think I am the only one who has a copy of that opinion. I have a copy of it in my files.

Mr. HALLECK. I would not have known about that opinion, except you made reference to it.

Mr. SMITH of Virginia. I ask that the witness be requested to include that opinion as part of his remarks, at the end of his statement.

The CHAIRMAN. Please do that, Mr. Fisher.

Mr. FISHER. I shall.

(The following is the opinion in question:)

JULY 25, 1944.

Hon. MARY T. NORTON,
Chairman, Committee on Labor, House of Representatives,
Washington, D. C.

MY DEAR MRS. NORTON: In your letter dated May 11, 1944, you requested the views of this Department concerning H. R. 3986, H. R. 4004 and H. R. 4005. These bills seek to prohibit discrimination in employment because of race, creed, color, national origin, or ancestry.

The bills are practically identical. By their terms they are applicable to employers of more than five persons, who are engaged in interstate or foreign commerce, or who are operating under a contract with the United States or a subcontract under a Government contract. The legislation would also be applicable to labor unions having five or more members in the employ of one or more employers covered by the act (sec. 4).

The proposed legislation declares it to be an unfair employment practice for any employer within the scope of the act to refuse to hire, to discharge, or to discriminate against any person because of his race, creed, color, national origin, or ancestry and provides that it shall be an unfair employment practice for any

labor union within the scope of the act to refuse to admit, to expel from membership, or to discriminate against, any person because of his race, creed, color, national origin, or ancestry (sec. 3).

The bills provide for the creation of a Fair Employment Practice Commission to be composed of seven members appointed by the President by and with the advice and consent of the Senate. The Commission would be clothed with authority to conduct investigations under the act, to issue orders to cease and desist, and to require persons violating the act to take appropriate affirmative action (secs. 5–10).

Orders of the Commission would be enforced by petition on the part of the Commission to the appropriate circuit court of appeals. Final orders of the Commission would be reviewable by the court (sec. 10).

Whether this legislation should be enacted raises a question of legislative policy which I shall not discuss. I believe, however, that I should call the committee's attention to the fact that the present form of the bills raises certain legal problems that are very troublesome.

Section 1 is a statement of findings and a declaration of policy. The first paragraph of the section finds that discrimination "burdens, hinders, and obstructs commerce." This finding is apparently designed to support legislative jurisdiction on the theory that acts of discrimination affect and burden interstate commerce. The paragraph concludes with a declaration that it is "the policy of the United States to eliminate such discrimination in all employment relations which fall within the jurisdiction of control of the Federal Government as hereinafter set forth." Subsection (a) of section 4 provides that the act shall apply to, among others, "any employer * * * who is (1) engaged in interstate or foreign commerce * * *."

The scope of the concept of activities that burden, hinder, and obstruct interstate commerce is broader than the concept of activities that occur "in interstate or foreign commerce." The bill should clearly state which of these two theories of legislative jurisdiction it intends to adopt, or whether it intends to rest on both of them. This would require redrafting of both sections 1 and 4.

Section 2 states that the right to work and to seek work without being subject to discrimination because of race, creed, color, national origin, or ancestry is a privilege, and freedom from such discrimination is an immunity, of all citizens of the United States which shall not be abridged by any State or by an instrumentality or creature of any State. This section would seem to have reference to the protection of rights under the fourteenth amendment. This amendment limits the power of the States rather than that of private persons (*Civil Rights cases*, 109 U. S. 3). The committee may wish to consider whether under the Constitution the immunity referred to is one which appertains to the citizens of the States as such, and whether it can be created by Federal legislation. It may also wish to consider whether section 2 is intended to provide a basis for jurisdiction separate from and in addition to sections 1 and 4, and if not, whether it should be included in the bills.

Section 4, which defines the scope of the proposed act, provides that it shall apply to any employer, having in his employ more than five persons, who is "performing work, under subcontract or otherwise, called for by contract to which the United States or any agency thereof is a party." Section 13 provides that every Government contract and subcontract shall contain an antidiscrimination clause. It is uncertain, however, whether section 4 assumes that the jurisdiction of the Federal Government rests upon the fact that the contractor by agreement has undertaken to meet the standards specified in the act or whether it assumes that the employment practices of a Government contractor are subject to control by the Federal Government simply because of his status and irrespective of whether he is engaged in interstate commerce or has specifically agreed to subject himself to that control. This ambiguity should be clarified because if section 4 proceeds on the latter assumption, it raises certain difficult constitutional questions.

It should be pointed out that section 4 is ambiguous in the sense that it does not indicate clearly whether all of the activities of the contractor are subject to the act or whether its application is confined to employment practices directly involved in the work called for by the Government contract. Unless the more limited of these two interpretations is to be adopted, the committee may wish to consider the questions that will arise as to the constitutional basis for Federal jurisdiction.

Similar problems arise as to subsection (b) of section 4 which provides that the act shall apply to any labor union which has five or more employees in the employ

of one or more employers covered by subsection (a). Thus, the committee may wish to consider the legal issues raised by the assumption that a labor union is subject to Federal jurisdiction simply because its members work for an employer who has a Government contract, Furthermore, it is not clear whether the act is intended to apply only to activities of labor unions which are directly involved in the performance of a Government contract or whether it applies to all activities of the union, irrespective of whether those activities would otherwise be subject to Federal control.

It should be noted that section 4 makes no provision for excepting agricultural workers from the scope of the act.

Section 4 also provides for enforcement of the act against the United States and its instrumentalities and agencies, by petition to the Attorney General of the United States. The committee may wish to consider whether it would not be more appropriate to vest this authority in the Civil Service Commission.

Section 11 gives the Commission certain investigatory powers. This section is based substantially upon section 11 of the National Labor Relations Act (U. S. C., title 29, *sec.* 161). The provisions of that act for the service and return of process and the fees of witnesses and for assistance to the National Labor Relations Board by other departments and agencies of the Government are omitted.

Section 13 provides that all Government contracts shall include an antidiscrimination clause, that a similar clause shall be included in subcontracts, and that unless the Commission expressly determines otherwise, any person, including corporations, who violates the provisions of the act shall be barred for 3 years from all Government contracts. It makes the further provision that "any firm, corporation, partnership, or association in which such person has a controlling interest," shall be likewise barred A list of such persons is to be distributed by the Comptroller General to all agencies of the United States. The committee may wish to obtain the views of the various procurement agencies of the Government about the administrative problems that may be created by this section. This section would seem to bring a contractor's or subcontractor's entire employment relations within the scope of the proposed legislation. The committee's attention is again called to the jurisdictional problems which are raised by this provision.

The contracts described in this section are those "hereafter negotiated or renegotiated" and those which "shall be awarded by the United States or any agency thereof." It might be well to consider substituting the word "executed" for the word "negotiated" on page 11, line 24, so that the wording will be "executed or renegotiated" (H. R. 4005). The words "executed or" might then be inserted before the word "awarded" on page 12, line 5.

The committee might consider including in section 16 definitions of such terms as "engaged in interstate or foreign commerce," "burdens, hinders, and obstructs commerce"; or "affecting commerce," if that term should be used.

The Director of the Bureau of the Budget informs me that there is no objection to the filing of this report.

Sincerely yours,

——— ———, *Attorney General.*

The CHAIRMAN. Since the House is in session, it will be necessary that the committee adjourn at this time, to meet tomorrow morning at 10:30 o'clock.

(Thereupon at 12:20 p. m., Wednesday, April 25, 1945, the committee adjourned, to meet at 10:30 a. m., Thursday, April 26, 1945.)

TO PROHIBIT DISCRIMINATION IN EMPLOYMENT BECAUSE OF RACE, CREED, COLOR, NATIONAL ORIGIN, OR ANCESTRY

THURSDAY, APRIL 26, 1945

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RULES,
Washington, D. C.

The committee this day met at 10:30 a. m., Hon. Adolph J. Sabath, chairman, presiding, for further consideration of H. R. 2232.

ADDITIONAL STATEMENT OF HON. CLARK FISHER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

The CHAIRMAN. Let us hear Mr. Fisher further.

Mr. FISHER. Mr. Chairman and members of the committee, I am not disposed to impose on the time of the committee very much further.

Yesterday I referred to the fact that the Attorney General, after analyzing the bill introduced by Mr. Scanlon, of Pennsylvania, expressed doubt as to the constitutionality of several provisions of the bill.

I have given the reporter a copy of the Attorney General's opinion for inclusion in yesterday's record, in consonance with my promise to the chairman.

The CHAIRMAN. Have you a copy of that opinion with you now?

Mr. FISHER. Yes; I have several copies of it. It is a four-page opinion.

The CHAIRMAN. Can you not read it?

Mr. FISHER. It would take a good while to read it, but I shall be pleased to do so, if desired.

The CHAIRMAN. As I understand, that opinion covers the so-called Scanlon bill which was introduced in the last session of the Congress; is that true?

Mr. FISHER. Yes.

The CHAIRMAN. The opinion to which you refer is not on the pending bill?

Mr. FISHER. It is not.

Mr. COLMER. Are the provisions of the Scanlon bill which the Attorney General indicated were unconstitutional in the pending bill?

Mr. FISHER. Practically the same provisions of the Scanlon bill to which the Attorney General took exception are in the so-called Norton bill. The verbiage has been changed a little in an attempt to make the proposal constitutional by giving the Congress the power to legislate in this regard under the commerce clause of the Constitution. The Attorney General stated that certain provisions of the Scanlon bill

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raised grave doubts in his mind as to their constitutionality, and an attempt was made by the Labor Committee, by slight changes, to make the pending bill constitutional.

The CHAIRMAN. That was to cure the defects found by the Attorney General in the Scanlon bill, was it not?

Mr. FISHER. I do not think the changes cured the unconstitutionality of the pending bill.

The CHAIRMAN. The Supreme Court has held some provisions of laws unconstitutional; the Congress had remedied those defects, and then the laws were declared constitutional. That is not unusual, as you yourself know.

Mr. FISHER. I do not care to discuss the constitutionality of this proposed measure.

Mr. MICHENER. That opinion was rendered by this great, liberal Attorney General we have?

Mr. FISHER. Yes.

Mr. COX. Yesterday you concluded for the day after you had reached the Attorney General's opinion, did you not?

Mr. FISHER. Yes; that is true.

Mr. COX. Suppose you return to that matter and tell us what he says about the Scanlon bill.

Mr. FISHER. That opinion is rather lengthy.

The CHAIRMAN. But, gentlemen, if does not apply to H. R. 2232, the pending bill. It covers a bill that was under consideration in the last Congress, but for which a rule was not granted, and it, therefore, did not reach the House. If that opinion contains anything touching upon the pending bill, we want to know that, of course.

Mr. SMITH of Virginia. On that same point, Mr. Chairman, if the Attorney General's letter is not relevant to this bill, and therefore it should not be read, then the hearings are not relevant because they were held on the Scanlon bill and not on the pending bill. Is not that true?

Mr. FISHER. Yes.

The CHAIRMAN. The Labor Committee, as has been testified here, had 12 or 15 such bills before it. It held hearings by a subcommittee and then took the good points of two or more bills and made them into one bill, which is before us. Then the full Committee on Labor decided to report the bill favorably and the chairman of that committee was authorized and directed to apply for a rule to cover the bill, which she did. Is not that the procedure followed?

Mr. FISHER. There were about 12 bills introduced this session of the Congress. Three such bills were introduced at the last session. Practically all the 12 bills were almost identically the same as the original Scanlon bill. Apparently in an attempt to meet the objections of the Attorney General, the bill was rewritten and the verbiage changed somewhat from the wording of the Scanlon bill. There were no hearings whatever on the pending bill. There has not been an opinion of the Attorney General as to the constitutionality of the pending bill.

The CHAIRMAN. I believe you stated here yesterday that you were not a member of the subcommittee that held hearings on this subject, of which subcommittee Mr. Randolph was chairman.

Mr. FISHER. That is right; I was not a member of that subcommittee.

The CHAIRMAN. Were you here when Mr. Randolph testified that hearings were held?

Mr. FISHER. He did not, in fact, conduct any hearings this session. Those were executive sessions of seven members of the Labor Committee, five of whom were new Members of Congress who had not heard a word of the testimony. They were not, of course, in Congress when the hearings were had last year.

Mr. COX. You do not approve a legislative committee holding secret hearings on proposed legislation, do you?

The CHAIRMAN. No; I want open hearings.

The witness was not there, but Mr. Randolph was. We all know Mr. Randolph to be fair and truthful, and I know he would not tell us other than the exact truth.

Mr. FISHER. Does the chairman take the position that open hearings were conducted on this pending bill?

The CHAIRMAN. I do not take any position. It was testified that the subcommittee held many meetings and conferences and after many, many conferences and hearings, having these 12 bills before them, they finally agreed in full committee to this bill and authorized and directed Mrs. Norton to report it favorably and request a rule to cover it. The full committee agreed on all provisions of the pending bill and authorized Mrs. Norton to request a rule. That is what I understand. Of course, I was not there.

Mr. FISHER. I understood you to say, or imply, that hearings were held on the pending bill. If they were, I did not know anything about it, and if that be true, I should like to know about it.

I attended the meetings of the full committee when it considered this bill. No hearings have been held on this bill during the present session of the Congress, and the chairman of the Labor Committee informed me in response to a question that none would be held—that the hearings had been completed.

Mr. COLMER. Referring to the opinion of the Attorney General, I understand that the Attorney General gave an opinion on a bill that had substantially the same provisions as has the pending bill; is that correct?

Mr. FISHER. That is correct.

Mr. COLMER. And that is the only opinion that was given on this subject by the Attorney General and that is the only thing the committee had before it; is that right?

Mr. FISHER. That is right. The pending bill, in its present form, so far as I know, has not been submitted to the Attorney General for an opinion.

The CHAIRMAN. The opinion of the Attorney General does not cover the bill before us. It is on the so-called Scanlon bill which was pending in the last Congress.

Mr. COLMER. Mr. Chairman, I do not understand that you are prosecutor and I am defender. I am doing the questioning now.

The CHAIRMAN. I do not think you understand just what happened.

Mr. COLMER. I think the witness knows just what happened all along. I do not think the chairman himself knows just what did happen.

The CHAIRMAN. I am slow and dull and find it hard to grasp some things, some high points, and therefore you will, I know, excuse me.

Mr. COLMER. I am wondering whether we could not declare a truce and let the witness testify a little.

The CHAIRMAN. I had thought the gentleman had concluded.

Mr. COX. No. The gentleman said he wanted to speak further on other provisions of the bill.

The CHAIRMAN. I did not understand that.

Mr. SMITH of Virginia. I think we are all agreed that it would be informative if we should have the opinion of the Attorney General read.

The CHAIRMAN. That will be done, if you wish it to be done.

Mr. DELANEY. Is the opinion of the Attorney General on the pending bill?

Mr. FISHER. No; it is on the bill from which the present bill was drafted. It is on the so-called Scanlon bill of the last session of the Congress.

Mr. MICHENER. The opinion covers the bill on which hearings were held?

Mr. FISHER. It does.

Mr. SMITH of Virginia. Is that opinion printed in the record of hearings of the Labor Committee?

Mr. FISHER. No; it is not.

Mr. SMITH of Virginia. Was that opinion received by the Labor Committee before the bill was reported?

Mr. FISHER. It evidently was, judging by the date on the opinion, July 25, 1944.

Mr. SMITH of Virginia. Do you mean to say that, in face of an opinion of the Attorney General saying that the bill was unconstitutional, the Labor Committee reported it out?

Mr. FISHER. Yes; that is true.

Mr. SMITH of Virginia. And without printing the opinion of the Attorney General in the hearings, so that the membership might be properly informed?

Mr. FISHER. That is correct.

The CHAIRMAN. The Labor Committee acted in accordance with the opinion of the Attorney General by correcting the defects that opinion pointed out in the Scanlon bill, when it reported the bill now before us.

Mr. FISHER. I do not think the objections of the Attorney General have been met in drafting the pending bill.

The CHAIRMAN. You say that the pending bill was changed somewhat from the Scanlon bill, as I understand—amendments were inserted that eliminated the objections pointed out in the bill introduced by Mr. Scanlon; is that right?

Mr. FISHER. I did not say the slight changes had that effect—they did not, in my opinion, cure the defects pointed out by the Attorney General.

Mr. MICHENER. Was that opinion of the Attorney General before the Labor Committee when it reported the pending bill?

Mr. FISHER. Yes. Mr. Smith has referred to the fact that the bill was reported by the Labor Committee in face of this opinion. The Scanlon bill was reported favorably by the Labor Committee last fall, it came before this committee for a rule, but it was not granted. It was in the same wording when reported as it was when the Attorney General ruled on it. Shall I read that opinion?

The CHAIRMAN. That is up to the members of the committee.
Mr. SMITH of Virginia. I think we should hear it.
Mr. FISHER. It says:

DEPARTMENT OF JUSTICE,
Washington, July 25, 1944.

Hon. MARY T. NORTON,
Chairman, Committee on Labor,
House of Representatives, Washington, D. C.

MY DEAR MRS. NORTON: In your letter dated May 11, 1944, you requested the views of this Department concerning H. R. 3986, H. R. 4004, and H. R. 4005. These bills seek to prohibit discrimination in employment because of race, creed, color, national origin, or ancestry.

The bills are practically identical. By their terms they are applicable to employers of more than five persons, who are engaged in interstate or foreign commerce, or who are operating under a contract with the United States or a subcontract under a Government contract. The legislation would also be applicable to labor unions having five or more members in the employ of one or more employers covered by the act (section 4).

The proposed legislation declares it to be an unfair employment practice for any employer within the scope of the act to refuse to hire, to discharge, or to discriminate against any person because of his race, creed, color, national origin, or ancestry, and provides that it shall be an unfair employment practice for any labor union within the scope of the act to refuse to admit, to expel from membership, or to discriminate against, any person because of his race, creed, color, national origin, or ancestry (section 3).

The bills provide for the creation of a Fair Employment Practice Commission to be composed of seven members appointed by the President by and with the advice and consent of the Senate. The Commission would be clothed with authority to conduct investigations under the act, to issue orders to cease and desist, and to require persons violating the act to take appropriate affirmative action (sections 5–10).

Mr. DELANEY. The bill now before us calls for 5 members of this proposed Commission.

Mr. FISHER. Yes; that is a change made when the bill was rewritten. Under the Scanlan bill this Commission could penalize a contractor by denying him a Government contract during a period of 3 years. The framers of this bill then became soft-hearted and provided that an offender would be debarred from Government contracts for a period of only 1 year, this provision being in the pending bill.

Mr. SMITH of Virginia. That was a very generous gesture.

Mr. FISHER. Yes. [Continuing:]

Orders of the Commission would be enforced by petition on the part of the Commission to the appropriate circuit court of appeals. Final orders of the Commission would be reviewable by the court (section 10).

Whether this legislation should be enacted raises a question of legislative policy which I shall not discuss. I believe, however, that I should call the committee's attention to the fact that the present form of the bill raises certain legal problems that are very troublesome.

Section 1 is a statement of findings and a declaration of policy. The first paragraph of the section finds that discrimination "burdens, hinders, and obstructs commerce." This finding is apparently designed to support legislative jurisdiction on the theory that acts of discrimination affect and burden interstate commerce. The paragraph concludes with a declaration that it is "the policy of the United States to eliminate such discrimination in all employment relations which fall within the jurisdiction or control of the Federal Government as hereinafter set forth." Subsection (a) of section 4 provides that the act shall apply to, among others, "any employer * * * who is (1) engaged in interstate or foreign commerce * * *."

The scope of the concept of activities that budren, hinder, and obstruct interstate commerce is broader than the concept of activities that occur "in interstate or foreign commerce." The bill should clearly state which of these two theories of legislative jurisdiction it intends to adopt, or whether it intends to test on both of them. This would require redrafting of both sections 1 and 4.

Section 2 states that the right to work and to seek work without being subject to discrimination because of race, creed, color, national origin, or ancestry is a privilege, and freedom from such discrimination is an immunity of all citizens of the United States which shall not be abridged by any State or by an instrumentality or creature of any State. This section would seem to have reference to the protection of rights under the fourteenth amendment. This amendment limits the powers of the States rather than that of private persons (*Civil Rights cases*, 109 U. S. 3). The committee may wish to consider whether under the Constitution the immunity referred to is one which appertains to the citizens of the States, as such, and whether it can be created by Federal legislation. It may also wish to consider whether section 2 is intended to provide a basis for jurisdiction separate from and in addition to sections 1 and 4, and, if not, whether it should be included in the bills.

This provision was not changed when the present bill was written. [Continuing:]

Section 4, which defines the scope of the proposed act, provides that it shall apply to any employer, having in his employ more than five persons, who is "performing work, under subcontract or otherwise, called for by contract to which the United States or any agency thereof is a party." Section 13 provides that every Government contract and subcontract shall contain an antidiscrimination clause. It is uncertain, however, whether section 4 assumes that the jurisdiction of the Federal Government rests upon the fact that the contractor by agreement has undertaken to meet the standards specified in the act or whether it assumes that the employment practices of a Government contractor are subject to control by the Federal Government simply because of his status, and irrespective of whether he is engaged in interstate commerce or has specifically agreed to subject himself to that control. This ambiguity should be clarified, because if section 4 proceeds on the latter assumption, it raises certain difficult constitutional questions.

This objection of the Attorney General was not met in the pending bill. [Continuing:]

It should be pointed out that section 4 is ambiguous in the sense that it does not indicate clearly whether all of the activities of the contractor are subject to the act or whether its application is confined to employment practices directly involved in the work called for by the Government contract. Unless the more limited of these two interpretations is to be adopted, the committee may wish to consider the questions that will arise as to the constitutional basis for Federal jurisdiction.

Similar problems arise as to subsection (b) of section 4, which provides that the act shall apply to any labor union which has five or more employees in the employ of one or more employers covered by subsection (a). Thus, the committee may wish to consider the legal issues raised by the assumption that a labor union is subject to Federal jurisdiction simply because its members work for an employer who has a Government contract. Furthermore, it is not clear whether the act is intended to apply only to activities of labor unions which are directly involved in the performance of a Government contract or whether it applies to all activities of the union, irrespective of whether those activities would otherwise be subject to Federal control.

It should be noted that section 4 makes no provision for excepting agricultural workers from the scope of the act.

That objection was not met in the new bill—the pending bill. [Continuing:]

Section 4 also provides for enforcement of the act against the United States and its instrumentalities and agencies, by petition to the Attorney General of the United States. The committee may wish to consider whether it would not be more appropriate to vest this authority in the Civil Service Commission.

The committee did not see fit to respond to the suggestion of the Attorney General there either. [Continuing:]

Section 11 gives the Commission certain investigatory powers. This section is based substantially upon section 11 of the National Labor Relations Act (U. S. C., title 29, sec. 161). The provisions of that act for the service and return

of process and the fees of witnesses and for assistance to the National Labor Relations Board by other departments and agencies of the Government are omitted.

Section 13 provides that all Government contracts shall include an antidiscrimination clause, that a similar clause shall be included in subcontracts, and that unless the Commission expressly determines otherwise, any person, including corporations, who violate the provisions of the act shall be barred for 3 years from all Government contracts. It makes the further provision that "any firm, corporation, partnership, or association in which such person has a controlling interest" shall be likewise barred. A list of such persons is to be distributed by the Comptroller General to all agencies of the United States. The committee may wish to obtain the views of the various procurement agencies of the Government about the administrative problems that may be created by this section. This section would seem to bring a contractor's or subcontractor's entire employment relations within the scope of the proposed legislation. The committee's attention is again called to the jurisdictional problems which are raised by this provision.

The problems of jurisdiction were not met in the new bill—the pending bill. [Continuing:]

The contracts described in this section are those "hereafter negotiated or renegotiated" and those which "shall be awarded by the United States or any agency thereof." It might be well to consider substituting the word "executed" for the word "negotiated" on page 11, line 24, so that the wording will be "executed or renegotiated" (H. R. 4005). The words "executed or" might then be inserted before the word "awarded" on page 12, line 5.

The committee might consider including in section 16 definitions of such terms as "engaged in interstate or foreign commerce," "burdens, hinders, and obstructs commerce"; or "affecting commerce," if that term should be used.

I believe an attempt was made in the pending bill to meet that suggestion. [Continuing:]

The Director of the Bureau of the Budget informs me that there is no objection to the filing of this report.

Sincerely yours,

FRANCIS BIDDLE,
Attorney General.

The only comment I would make on this opinion is that I think any careful analysis of the pending bill will show that most of the objections made by the Attorney General were not met in the pending Norton bill; and the bill, as written, has not been submitted to the Attorney General with a view to determining its constitutionality.

Mr. SMITH of Virginia. The last matter to which the Attorney General called attention has reference to section 16, having to do with regulations. That is found at page 11, line 23, of the bill. You indicated that such defect had been corrected, but the language is, in fact, the same.

Mr. FISHER. I did not mean the objection was met. The Attorney General says:

The committee might consider including in section 16 definitions of such terms as "engaged in interstate or foreign commerce," "burdens, hinders, and obstructs commerce"; or "affecting commerce," if that term should be used.

I said I believed that the Labor Committee, in writing the pending bill, made an attempt to meet that suggestion of the Attorney General. I did not refer to the whole section. An attempt is made to give the Federal Government jurisdiction over this subject under the commerce clause on the theory that alleged discrimination obstructs commerce and prevents its free flow.

The CHAIRMAN. That is what the bill aims to do.

Mr. FISHER. The Attorney General said the bill did not meet that requirement.

The CAIRMAN. This applies to contracts entered into with the with the United States Government.

Mr. FISHER. In my opinion, if a considered effort were made along this line to deprive citizens of property rights without due process of law, this bill could not be improved upon. Here we have peoples' valuable property rights being jeopardized by an act of the Fair Employment Practice judge, one who would have more power under the provisions of this proposed law than the average Federal judge has today. This Fair Employment Practice judge, as has been pointed out so well here, if he does the investigating, has the power to go into the victim's private place of business without a search warrant, Constitution or no Constitution. This proposal gives the investigator the right to go into a private place of business and conduct a search and copy anything he may see fit to copy, and if one interferes he may be sent to the penetentiary for a year and fined $5,000.

The CHAIRMAN. In your opinion, is the whole bill unconstitutional, or just part of it?

Mr. FISHER. We might search to see if there is a constitutional provision in the bill. The section which gives an investigator a right to conduct a search without a search warrant is clearly unconstitutional.

The CHAIRMAN. Where is that in the bill?

Mr. FISHER. I am glad to point that out. I know the chairman will be amazed.

Mr. COX. I do not know whether he would be or not.

Mr. FISHER. Beginning at page 10, line 22, we find:

> For the purpose of all investigations, proceedings, or hearings which the Commission deems necessary or proper for the exercise of the powers vested in it by this Act, the Commission, or its authorized agents or agencies, shall at all reasonable times have the right to examine or copy any evidence of any person being investigated or proceeded against relating to any such investigation, proceeding, or hearing.

The CHAIRMAN. It provides that this shall be done "at all reasonable times." It does not say the Commission or its agent may seize property.

Mr. FISHER. This bill gives a right to copy records. I did not say it gave power to seize property. They would have a right to search for records and copy them without a search warrant.

Mr. SMITH of Virginia. The constitutional inhibition is against search, is it not?

Mr. FISHER. Yes; it is.

Mr. SMITH of Virginia. In connection with your talk about this being unconstitutional, all the way from beginning to end the accused is deprived of the rights of trial by jury, is he not?

Mr. FISHER. There is no provision whatever for the right of trial by jury. I asked Malcolm Ross, chairman of the present Fair Employment Practice Committee, what he thought about that, and he said he was opposed to a jury trial in a case of this kind. He said we should not allow a jury trial.

Mr. SMITH of Virginia. Did you ask him, further, whether he believed in a jury trial? Perhaps he does not believe in that. If he does not, he would not be for that.

Let me read section 13 of the pending bill, and then I would like to have you tell me what it means. It says:

Any person who shall willfuly resist, prevent, impede, or interfere with any member of the Commission or any of its referees, agents, or agencies, in the performance of duties pursuant to this Act, shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

What does that mean?

Mr. FISHER. I gave an example of that a moment ago. It is made their duty and they have a right to make a search. Suppose one would say, "Just a minute, show me your authority to make a search of my premises," and the searcher would reply, "I am a Fair Employment Practice judge, and that is all I need." Suppose the one about to be searched asked for a search warrant, and, failing to get it, told the Commission's agent to get off the premises. That man has interfered with the agent of this Commission. The bill says, "interfere with any member of the Commission or any of its referees, agents, or agencies, in the performance of duties." It is the duty of an agent of the Commission to make that search, and if the one to be searched makes any objection or interferes, this is an example of what will happen—he will be subject to a fine of $5,000 or 1 year's imprisonment, or both.

Mr. SMITH of Virginia. This act is set up on the theory of civil penalties for discriminators, is it not?

Mr. FISHER. Yes; it is.

Mr. SMITH of Virginia. Suppose one is accused of discriminating and the Fair Employment Practice Commission finds him guilty. He says, "No, I am not guilty; you have made a finding against me without substantial evidence, and I will not do as you say." The Commission does not go to the courts to enforce its decrees; but it may charge one with interfering with the Fair Employment Practice Commission by failing to carry out its orders. If it should be held that they, in attempting to carry out their orders, are engaged in the performance of their duties pursuant to this act, those who might interfere would be subject to the penalties prescribed. Is not that right?

Mr. FISHER. Yes.

Mr. COX. Does this highjacker initiate the prosecution, try the case, and impose sentence?

Mr. FISHER. Yes; that is true.

The CHAIRMAN. The examiner or the investigator would impose the penalties, would he not?

Mr. FISHER. He would be acting for the Commission. He would be the delegated agent of the Commission. He would act for the Commission, because it cannot be there. He would make the finding and report to the Commission.

Mr. SMITH of Virginia. Referring to criminal penalties, suppose a man has been found guilty of discrimination and he is ordered to do certain things, but he does not do them. Does he not thereby resist and prevent the Commission from carrying out its work?

Mr. FISHER. The act might well be interpreted that way.

Mr. SMITH of Virginia. And he could subject himself to a fine of $5,000 or 1 year's imprisonment, or both, for failing to carry out the order of the Commission.

Mr. FISHER. Section 2 (c), page 2, of the bill, provides that—

It is hereby declared to be the policy of the Congress to protect such right and to eliminate all such discriminations to the fullest extent permitted by the Constitution. This Act shall be construed to effectuate such policy.

In other words, Congress would tell the courts that this bill must be construed to effectuate this policy and do the things you mention.

Mr. SMITH of Virginia. I have been trying to find out who wrote this monstrosity. Do you know?

Mr. FISHER. I have no direct information as to that. It was originally introduced, as I have said here several times, by Mr. Scanlon of Pennsylvania.

Mr. SMITH of Virginia. Who wrote it for Mr. Scanlon, if you know?

Mr. FISHER. I understand Mr. Scanlon is not a lawyer. As to who wrote it, I have no direct information.

Mr. SMITH of Virginia. Did not Mr. Felix Cohen, in the Department of the Interior, write this bill? Do you know Mr. Cohen?

Mr. FISHER. I do not know him personally.

Mr. SMITH of Virginia. Did he write this bill?

Mr. FISHER. I have heard he had something to do with it.

The CHAIRMAN. That was the bill in the last Congress and it is not before us.

Mr. SMITH of Virginia. The hearings of the Labor Committee were on the Scanlon bill.

The CHAIRMAN. We have no jurisdiction over bills that were introduced in the last Congress. They are dead if they did not pass.

Mr. SMITH of Virginia. Is not this Norton bill framed in accordance with the Scanlon bill?

Mr. FISHER. Yes; the Norton bill is practically the same as the Scanlon bill. Only minor changes were made.

Mr. SMITH of Virginia. The basis and theory of this bill is the same as the basis and theory of the Scanlon bill, as I understand.

Mr. FISHER. Yes. The chairman of the Labor Committee said so. That is the reason she said she did not want further hearings at this session of the Congress—the pending bill being the same as the Scanlon bill. That is what she said.

Mr. SMITH of Virginia. When the subcommittee of the Labor Committee drafted this bill, do you know who sat in with the members of the committee?

Mr. FISHER. No; I do not.

Mr. SMITH of Virginia. You cannot give me any information on that?

Mr. FISHER. No.

Mr. COX. That subcommittee had advisers, did it not?

Mr. FISHER. I do not know. I think somebody from the office of the legislative counsel was there.

Mr. COX. Does Mr. Cohen fall within that category?

The CHAIRMAN. Can we not give full faith and credit to the word of one who has been a Member of the House many years and who has long been chairman of an important committee? That person stated here that the committee examined all the bills carefully, took good points from two or more bills, and then had the legislative counsel assist in framing a bill or drafting a bill that would conform to the regular formalities.

Mr. SMITH of Virginia. I want to know about the original drafting of the bill when it was introduced.

The CHAIRMAN. Should the evidence I have just mentioned be ignored?

Mr. FISHER. I am sure the subcommittee had the services of somebody from the office of the legislative counsel when the bill was put in shape in committee. I do not know who inspired or wrote the original bill.

Mr. SMITH of Virginia. What did the legislative counsel do, if you know?

Mr. FISHER. He assisted in redrafting some sections of the bill.

Mr. SMITH of Virginia. Who wrote the original bill, if you know. Did Mr. Felix Cohen——

The CHAIRMAN (intervening). That refers to the Scanlon bill which was in the last session of Congress, and we should not give attention to it. It never came out because it did not get a rule.

Mr. SMITH of Virginia. I am very much interested in who wrote the original bill, and why.

The CHAIRMAN. The chairman of the subcommittee, who is honest, fair, and square with everybody in every relation, told us about that. Mr. Randolph told us the whole procedure before the subcommittee and the full committee.

Mr. COX. Let us put all the cards on the table.

The CHAIRMAN. I do not want to go into something that is not before the committee. I know why this is being done, why these questions are being asked. I am not exactly smart, but I have ordinary horse sense, I hope, and I know the purpose of these questions, what you have in mind when asking these questions.

Mr. COX. You are pretty foxy, Mr. Chairman.

The CHAIRMAN. No; do not give me credit for that.

Mr. SMITH of Virginia. After that stump speech, let us get back to our subject.

Do you understand what Mr. Felix Cohen, of the Department of the Interior had——

The CHAIRMAN (intervening). I do not think that is a proper question. There is no evidence that Mr. Cohen wrote the bill. The witness has repeatedly stated he does not know who wrote the original bill.

Mr. SMITH of Virginia. You seem to squirm when I get close to him.

The CHAIRMAN. I am sorry you make that implication.

Mr. SMITH of Virginia. Mr. Chairman, I do not think you should take issue with me on that.

The CHAIRMAN. You are talking about a bill that is not before the committee.

Mr. SMITH of Virginia. It is before us.

The CHAIRMAN. No; it is not. The bill was drafted by the legislative counsel. That has been testified to by three witnesses.

Mr. SMITH of Virginia. Let us call the legislative counsel about that.

The CHAIRMAN. Mr. Randolph, Mr. Doyle, and Mrs. Norton testify to that.

Mr. SMITH of Virginia. Mrs. Norton did not say the legislative counsel drafted this bill—wrote it.

The CHAIRMAN. She testified to that. The principal witness himself testified to it—Mr. Randolph.

Mr. SMITH of Virginia. Have you any idea why Mr. Felix Cohen, a Government employee in the Department of the Interior, should write a bill for the Fair Employment Practice Commission to be presented to the Congress and enacted?

Mr. FISHER. I have no direct information on that, as to his motive.

Mr. SMITH of Virginia. You have some indirect information on it, have you not?

Mr. FISHER. I have heard rumors, but have not explored them.

Mr. SMITH of Virginia. You say you do not know who sat in with and advised the Randolph committee?

Mr. FISHER. Mr. Morgan appeared before the full committee after the Randolph committee reported the bill. I gathered from what he said that he rendered some assistance in drafting the bill. As to others who may have assisted, I am not informed.

Mr. SMITH of Virginia. Do you refer to Mr. Morgan, of the legislative drafting service?

Mr. FISHER. Yes. They rewrote the bills that had been introduced.

I have heard it discussed that both party national political platforms refer to some sort of legislation on this general subject. I think it would be well to remember that conditions have changed considerably since that time. Evidently, in an attempt to meet local conditions, 10 different States have introduced bills to deal with local problems in connection with discrimination. Many States have no such problems at all. The general national concept of the problem is to deal with it locally. New York State decided to do that. One branch of the Legislature of New Jersey has passed a similar bill. My point is that since those platform declarations there have been changes in conditions. This has come to be looked upon as a State or local matter. If the State of Illinois has the problem of discrimination, and it cannot correct it through the normal processes, then it can very well exercise its own sovereignty and pass a State law on the subject.

The CHAIRMAN. But the States have no jurisdiction in the matter of letting Government contracts.

Mr. FISHER. So far as that is concerned, the Fair Employment Practice provisions are put in all Government contracts now; and this would not affect that. This proposal puts in more severe penalties.

Mr. SMITH of Virginia. Have you a copy of the recently enacted New York State law on discrimination?

Mr. FISHER. Yes; here [indicating] it is. I do not have a copy of the New Jersey law, but it does provide, as I understand, for a trial by jury.

Let me make another observation in connection with the statement that this is a local problem. The chairman of the Labor Committee apparently feels that this bill is needed for the South, because she made that statement—that one of the purposes of the bill is to raise the level of the South up to the standards of the remainder of the country. You remember that quotation.

The CHAIRMAN. She had reference to the Wage-and-Hour Act when she made that statement.

Mr. FISHER. I did not so understand her.

The CHAIRMAN. That was the thought she had in mind.

Mr. COLMER. I did not so understand; and I was listening intently to what she said.

Mr. FISHER. As to whether this should be treated nationally or locally—where is this discrimination, where are the hotbeds of prejudice and bias referred to by the witnesses? Are they in the South, which contains three-fourths of the Negro population? Surely you

would believe the best authority as to where this discrimination exists. This is what Mr. Malcolm Ross, Chairman of the Fair Employment Practice Committee, said:

> Statistics, perhaps, do not completely tell the story; but we find about 17 percent of all cases originate in 8 Southern States, and that the other 83 percent is north of the Mason-Dixon line.

In other words, 83 percent of all discrimination in this Nation is not where Mrs. Norton referred to, but it is in New York, New Jersey, and elsewhere in the North.

The CHAIRMAN. I know that only a small percentage of violations are in the South, therefore I do not see why the objection to this bill.

Mr. FISHER. Would you not feel that this is a local and not a national problem? People do not quarantine for measles in localities where there is no measles.

The CHAIRMAN. It deals with Government agencies and also contracts with the Government and interstate and foreign commerce.

Mr. FISHER. It applies to practically all——

The CHAIRMAN. It applies to anything that would interfere with interstate and foreign commerce.

Mr. ALLEN of Illinois. Executive Order 9346 set up the Fair Employment Practice Committee and it continues to function. What has been the experience of this present committee in handling this problem? Has it been satisfactory?

Mr. FISHER. It has been very unsatisfactory. On several occasions the committee has gone out of its intended activities. Take, for example, the handling of the case of the Western Electric Co. at Baltimore, Md. That is the case wherein a partition between toilets, separating colored and white peoples, was removed, with the idea that all should use the same toilet facilities. The Negroes had no objection to that partition. Many employees insisted it should be restored. The question was referred to the Fair Employment Practice Committee in Washington. This company is engaged in manufacturing wire cables for the Army, and what did the Fair Employment Practice Committee do? It wrote an order requiring the joint toilet facilities to be maintained despite the fact the Negroes did not complain against separate facilities. Thereupon 3,000 employees of that company went on strike for 17 days and the Army had to take over. Except for the arbitrary and indefensible action of the Fair Employment Practice Committee, not an hour of time would have been lost and there would have been no strike.

There is another example in Philadelphia. No person, no matter how prejudiced and biased he might be, can read the record of the Philadelphia case and say there would have been a strike if it had not been for the action of the Fair Employment Practice Committee set up by the Executive order you mentioned. It insisted, under extremely high feeling, that eight Negroes be upgraded to engineers and conductors, which resulted in a strike that put literally hundreds and hundreds of workers out of employment several days and cost a loss of 4,000,000 man-hours to the war effort. That would not have happened except for the action of this Fair Employment Practice Committee.

That committee can show statistics proving more Negroes are employed. If at the beginning of the war there a committee had been set up to prevent discrimination against women, this committee could

now come forward and show a wonderful record by the fact that 47 percent more women were employed in 1944 than in 1940. They could say, "Look what we did." They could do the same with respect to teen-age persons, where employment has more than doubled. They could say the same with respect to other groups. Any committee that is organized could come in with a beautiful record, not because of any magic the Fair Employment Practice Committee has effected, because it is not engaged in employing workers, but because there are vastly more of all classes working than 4 years ago.

Mr. ALLEN of Illinois. Would you say that the experience of the past does not indicate a necessity for this proposed law?

Mr. FISHER. Yes; that is right.

A number of witnesses from labor unions appeared before the Labor Committee. Many described the wonderful work they were doing within the unions themselves to effect more general employment among those belonging to unions.

Mr. ALLEN of Illinois. Do you think this is a subject matter for Federal jurisdiction?

Mr. FISHER. I do not. It is purely a local problem. If there is any discrimination, in the first place, I will say I think it is a problem that cannot be influenced by legislation. This would have the effect of turning back the clock on the Negro race, for whose alleged benefit this proposal is designed. It will create racial ill feeling; it will promote strikes, violence, slow-downs, and industrial strife. It is a matter that cannot be dealt with by legislation. It can be improved only by the normal American way of doing things, namely, education and a tolerant approach to the general problem.

The average Negro in my home town, when he stops to think, must know that if his lot is to be improved he must depend upon his neighbors and friends; he must strive to merit their good will; he must not use force or threats; he must ingratiate himself with prospective employers; he must move in accordance with and not against progress. That is the only way to deal with this situation.

Mr. ALLEN of Illinois. Do you think this proposed act is the best solution of this problem or have any other methods of solution been considered?

Mr. FISHER. Yes. The record will show that practically every witness before the Labor Committee stated that during the past 200 years literally phenominal progress has been made in this great Nation through the normal American way without the use of force and coercion.

Mr. ALLEN of Illinois. Did your committee consider any other method of solving this problem except this particular method?

Mr. FISHER. I cannot speak for the committee. The committee had before it the experiences of people showing how they were getting on, how progress had been made everywhere, and that there has been a general improvement in general conditions with respect to employment and any other interracial problems. Witnesses before the Labor Committee were generous in their comments with respect to that type of progress.

Mr. ALLEN of Illinois. I am a believer in States' rights. Do you think the States need this Federal interference in connection with this problem?

Mr. FISHER. I do not.

Mr. ALLEN of Illinois. What is your attitude toward that?

Mr. FISHER. If conditions should become bad in any given State, wherein the normal American methods that have been used for 200 or 300 years failed, if the condition is so bad that it cannot be corrected normally as I have outlined, then let that State enact its own law to deal with its own problem.

Mr. ALLEN of Illinois. Upon what legal basis could the Federal Government control local unions?

Mr. FISHER. The Attorney General objected to that provision of the bill. I refer you to the opinion of the Attorney General. There is a serious question of legislative jurisdiction over a union in that regard.

Mr. ALLEN of Illinois. Do you believe, from a constitutional viewpoint, that the Federal Government can impose these provisions on the States?

Mr. FISHER. I discussed that matter briefly earlier. I do not believe the Federal Government has the authority under the commerce clause of the Constitution to legislate as this bill would, except with respect to its own employees. The Federal Government has a right to say anything it wants to say about its own employees or its contractors.

Mr. ALLEN of Illinois. If you had a business do you think you should be able to employ whomsoever you saw fit to employ?

Mr. FISHER. If the time comes when the average American cannot choose his own employees—the master-and-servant relationship is and always has been sacred—if the time comes when one cannot go out and employ a man because he knows him, because he likes his personality, because he can depend upon his loyalty and ability, a man he knows will make his business succeed—when a man does not have that fundamental right to look a man in the eye and say, "I want to hire you because you can make my business profitable and make me successful, in the free, American way", we shall have gone a long way toward totalitarianism and a form of regimentation; and, as the President said last night to the people of the world conference, when regimented to a certain extent the people are going to rebel against it.

Mr. ALLEN of Illinois. Let us consider a school in which 98 percent of the students are Jews, or a school in which 90 percent of the students are colored—do you think the one should be forced to employ non-Jew teachers and the other to employ white teachers? What is your idea on that?

Mr. FISHER. You make an excellent point there. That is a good point. Certainly such should not be required. In central European countries after the last war and up until the time Hitler came into power there had developed a quota system of allowing students to enter college. Under that system no university could accept more than a limited number of Jews, for example, in proportion to their population in Germany. That was known as a quota system. This bill, of course, is a direct approach to the same thing. I noticed that two or three witnesses have carefully denied that this would set up a quota system. If it does not, it should.

The average merchant should know what he has to do to comply with law, so that he will not be subject to the whims and prejudices of this proposed Commission. If the Commission does not say how many colored men he must hire, he will have to employ a lawyer to help him decide. This is a definite step toward the quota system.

Mr. ALLEN of Illinois. This discrimination would work both ways—the colored schools would not want white teachers, who, perhaps, would not properly understand the colored children, yet that would be a discrimination.

Mr. FISHER. Yes; this would work both ways. It would be unfair to the Negroes just as it would be unfair to the whites.

Mr. COX. I wonder whether you find in the pressure for the adoption of this kind of legislation, of this particular bill, further proof of the fact that the scheme or plan to remake America, to bring a totalitarian state before the soldiers get back home from winning the war, s not yet exhausted?

Mr. FISHER. With respect to the returning soldiers, to whom you refer, it is certain that it is manifestly unfair to them and indeed it almost reaches the point of being a fraud on their fundamental rights, to say when they are absent and cannot participate in this thing which will so very seriously affect them and their future, legislation of this kind should be enacted. When they come home and want to go into business and they are told they cannot hire whom they please, they will ask why. They will say "I could do it before," but the answer will be, "But the Congress has stepped in and said you cannot do that now." They will say, "You tell me that Congress says we cannot hire our buddies?" "Yes, that is true; Congress says that if those of the minority apply, they must have the work." What a condition that would create.

Mr. COX. Do you not believe that fair play and common sense demand that this reform movement stop here now until the soldiers can get back to participate in these affairs?

Mr. FISHER. I believe that thoroughly. This proposal has been paraded in the name of liberalism, but it is in fact a reactionary and backward step any way you wish to consider it.

Mr. COLMER. I want to preface my questions with a compliment for the splendid study you have given this matter and your very able presentation of it here. You have presented the matter in a manner which indicates that you are free of prejudice and bias. You have approached it intelligently. I am very much impressed by your presentation and I am sure the country owes you a debt of gratitude. When I say "the country" I mean all sections of the country and all classes, including the minorities.

I am wondering to begin with generally what your reaction is to the question of whether the country as a whole knows, is acquainted with, has a knowledge of, what this bill does and how far-reaching it is. Have you any comment on that?

I do not ask you to comment on that.

Mr. FISHER. With reference to the general understanding of the public, I can say very fairly that I think I know what I am talking about when I say that the average man does not know what this bill would do. He has had no opportunity to know. His sons are overseas fighting and being killed and wounded. His thoughts are overseas.

Furthermore, as the gentleman from Arkansas said, the title of this bill is misleading, it is deceptive. People, after looking at the title of the bill, will say "there is no harm in the bill, as one can see from the title." The public has no conception of the widespread application of this proposal, which will reach to the farms and all

communities and hamlets and give a commission or bureau here in Washington arbitrary and dictatorial powers not subject to court review as to the real issue involved, and which will seriously affect employment practices henceforth, if it be adopted.

Mr. COLMER. If the whole country were acquainted with the wide and embracive provisions of this bill that the Congress is asked to enact into law, do you not think the Congress would hear from others than organized minorities?

Mr. FISHER. That is certainly true. A newspaper columnist told me the other day that he was amazed that the people in New York did not even know the antidiscrimination bill had been enacted in that State and they did not know its contents.

Mr. COLMER. Since there were no hearings to speak of before the Labor Committee on this bill, do you not think it is the duty of this committee, which serves as a clearing house for legislation of the House, to conduct full and complete hearing on this bill, so that the whole country may be advised?

Mr. FISHER. Personally, I certainly think it is a subject of such widespread importance, affecting so many people all over the Nation, that the Congress owes it to the people to explore this proposal in detail before this or the Labor Committee. It would affect so many persons, at home and absent, that the many questions that have been raised in this committee should be thoroughly explored so that mistakes may not be made, for which mistakes many will be sorry.

Mr. COLMER. In that connection and in connection with the testimony of one of the proponents who is a member of the Labor Committee before this committee, is there any movement in the Labor Committee to take this bill back to that committee to try to have hearings and go into the matter very thoroughly?

Mr. FISHER. The gentleman may not have been here when the gentleman from West Virginia [Mr. Randolph] testified. He suggested that many questions had arisen here which he thought should be done into thoroughly. Certainly I think he was correct.

The pending bill cannot be corrected by isolated amendments. That would be like a surgeon trying to operate for cancer after it has spread all over the body. This bill cannot be perfected by making a few changes in isolated spots; the whole bill will have to be rewritten. Many of its vices have been admitted by even the sponsors of the bill.

Mr. COLMER. Following that up, Mr. Fisher, I did not understand that you got around to answering the question as to whether there was a disposition in the Labor Committee now, in view of these developments and the statement of the subcommittee chairman, Mr. Randolph, to recall this bill, take it back to the Labor Committee for further study?

Mr. FISHER. Yesterday a letter was read here from the chairman of the Labor Committee stating that the committee did not care to resume hearings.

Mr. COLMER. What is your own thought about that?

Mr. FISHER. My own thought is, in view of the fact that Mr. Randolph, one of the sponsors of the bill, stated frankly that there were provisions in the bill that had not occurred to him, and to which he was opposed; in view of the fact that the gentleman from California [Mr. Doyle] stated he had great apprehension about the method of

enforcing this proposed law—the one agency being judge, jury, and prosecutor—and in view of a number of other concerns that have been expressed not only by members of this committee and those who have appeared in opposition to this bill but also by its sponsors, in my opinion the bill should be subjected to further public hearings. I have had people contact me within the last week asking to be heard on this matter. They do not live here in Washington, but live throughout the Nation, and they had not heard about the bill before. Since the bill is of such widespread importance, I think it should be most thoroughly considered.

Mr. COLMER. You spoke a moment ago about the disunity that would flow in the wake of the enactment of such a law by the national legislative body. You come from the section of the country that has been largely the home of that class of people that will allegedly benefit by the enactment of this proposed legislation, as well as I do.

Mr. FISHER. Yes.

Mr. COLMER. Being acquainted with whatever problems exist in that section where large numbers of colored people still reside, can you conceive of anything that could happen down there in that section that would be more inimical to the welfare of that class of people than the enactment of such legislation as this, with all of its implications, by the national legislative body?

Mr. FISHER. That, gentlemen, is absolutely right. This is not a question of sectionalism, or feeling, or bias. It is absolutely true that it would be a step backward so far as the progress and assistance of those people to which you refer are concerned. There is no question about that.

Mr. COLMER. The class of people that they allegedly set out to help would in fact be injured, in your mature judgment, with the knowledge of the subject that you have, rather than helped?

Mr. FISHER. I think that in the very ordinary practices of human nature when you undertake to change a man's opinion or to legislate and tell him he must like somebody when he doesn't, that he has to be, say, a Catholic when he is not one, or a Protestant when he is not one that he has to be a Democrat, that he has to be a Republican, that he must like spinach when he does not, you are doing an injury to the very man you are trying to help, because you simply cannot help man that way.

The progress of this particular group depends upon the good will of their neighbors and friends, the friendship of those to whom they must go for employment. That cannot be created here in Washington. When you attempt to do that in Washington, you stir up resentment, and cause the employer to be naturally less considerate. Legislation cannot control opinion. That method of controlling opinion or thinking was only partially successful in Germany and Italy.

Mr. COLMER. We have tried unsuccessfully to find the author of this original proposal. Let me ask you this question seriously and without any desire to offend anybody, what part does the political situation play in fostering of this proposed legislation?

Mr. FISHER. My frank and candid opinion is that much pressure for it is of a political nature. There is an attempt to appeal to certain people. They hold out certain promises of utopia on the theory that "if you vote for me I will get that for you." I think this matter is deeply seated in politics. There are, of course, many social reformers

who like to play with things like this. If you will read the list of proponents of this measure, you will understand what I mean.

The CHAIRMAN. You would not charge the Republican Party with being reformers. It put this proposal in its platform, as did the Democratic Party.

Mr. FISHER. Yes; and there was an election a short time thereafter.

Mr. COLMER. Would you not say that the political implications are about even between the Republicans and the Democrats? I do not think that either party has a monopoly on that.

Mr. FISHER. It might be said that the Republican platform advocated a permanent Fair Employment Practice Act, but the Democratic platform did not mention it, but it did mention something similar.

Mr. BROWN of Ohio. A Democratic President created the Fair Employment Practice Committee?

Mr. FISHER. Yes; but I am talking about party platforms. I think it is 50–50.

Mr. COLMER. Whatever may be said about politics, each party might be tarred with the same stick.

Mr. FISHER. I think it is about 50–50.

Mr. BROWN of Ohio. I understood you to say a moment ago that if a veteran should come back from Iwo Jima and want to give a position, when he opened a business, to his buddy, and a representative of a minority group would ask for the same job, the veteran would be compelled under this proposal to give the job to the representative of the minority group, and could not give it to his buddy. Where do you find that in this bill? You made that definite statement.

Mr. FISHER. Let us revert to section 5 (1), at page 4 of the bill, which provides that it shall be an unfair employment practice for the purposes of this act for any employer "to refuse to hire any individual because of such individual's race, creed, color, national origin, or ancestry." Now suppose a Japanese applies for a job and he is refused because of his race——

Mr. BROWN of Ohio (intervening). You said that if a veteran wanted to hire his buddy, with whom he had served, and a member of a minority applied for the job, the members of the minority would have to be given the job. There is a difference between discrimination on account of race, color, creed, national origin, or ancestry, and discrimination in favor of a buddy because one thinks he would make a better employee. Is it not necessary to prove the kind and character of discrimination?

Mr. FISHER. We will say that the buddy of a veteran applies for the job. And let us say that a member of a minority race, a Japanese, applies for the same job, and he is turned down because the veteran says he does not like the Japanese, that, obviously, constitutes discrimination because of race.

Mr. BROWN of Ohio. That is different than you stated a minute ago. I am not sold on all provisions of this bill; but you made a definite statement a moment ago that I do not think stands up in the light of truth.

Mr. FISHER. Let us say that a Japanese applies for the job and the veteran refuses to hire him, and the next day the buddy of the veteran applies for the job and gets it. Both are equally well qualified to discharge the duties of the job in question. Then the Japanese files a

complaint with the Fair Employment Practice Commission and alleges that he was discriminated against on account of his race; and then the Fair Employment Practice man turns to section 5 (a) of this bill and finds that "It shall be an unfair employment practice for the purposes of this act for any employer to refuse to hire any individual because of such individual's race, creed, color, national origin, or ancestry." The case comes on for hearing before the Commission and the veteran testifies that he refused to hire the Japanese because he was a Japanese. This is, obviously, a discrimination against a man because he is of the Japanese race, and that is prohibited by the pending bill.

Mr. BROWN of Ohio. That would be a plain discrimination on account of race, but the case is not like the one you cited a minute ago when you said that a veteran would have to hire one of a minority group in place of his buddy, when the veteran would make the selection simply because he felt his buddy would be more valuable to his, the veteran's, business.

Mr. FISHER. Suppose the Japanese and the buddy both walk up to the veteran together, and the veteran says he will not hire the Japanese but will hire his buddy. The Fair Employment Practice Commission then decides that the reason for the choice is race.

Mr. BROWN of Ohio. Yes.

Mr. FISHER. Under the law the veteran could be compelled to hire the Japanese.

Mr. BROWN of Ohio. I understand how that section might lead to abuses in administration; but I also believe that if I, as a veteran, had a buddy that I wished to hire, because I thought he would be more valuable to my business, I could do so.

Mr. FISHER. Under the circumstances I have cited, if the Japanese is not hired and the veteran's buddy is hired, under the mandate of the Congress, if this bill becomes law, the veteran would be compelled to hire the first qualified man applying.

Mr. BROWN of Ohio. When you check over your remarks, I think you will find your statement different from that.

The CHAIRMAN. Since the House is in session, it will be necessary to adjourn, to meet at the call of the Chair.

(Thereupon at 12:15 p. m., Thursday, April 26, 1945, the committee adjourned, to meet at the call of the chairman.)

APPENDIX

HOUSE OF REPRESENTATIVES,
Washington, D. C., March 12, 1945.

Hon. ADOLPH SABATH,
Chairman, House Committee on Rules,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: I am writing this letter at the suggestion of the proponents of the bill, H. R. 2232, to ask that the Rules Committee give final consideration on a rule without further testimony from the individuals favoring the legislation.

It is felt by the supporters of the bill that the entire case has been presented in favor of it and we are all most anxious that action be taken by your committee just as soon as possible in order that a rule may be granted and the matter be brought to the floor for a full and complete discussion.

With kindest regards to you and hoping that the committee will expedite this matter, I am,

Sincerely yours,

MARY T. NORTON.

THE WHITE HOUSE,
Washington, June 5, 1945.

Hon. ADOLPH J. SABATH,
Rules Committee, House of Representatives,
Washington, D. C.

DEAR MR. CONGRESSMAN: I understand that the House Appropriations Committee has deleted from the war agencies appropriation bill for the fiscal year beginning July 1, 1945, all appropriations for the Fair Employment Practice Committee.

This action will have the effect of abolishing the Committee and terminating its work without giving the Members of the House of Representatives an opportunity to vote on the question.

The Fair Employment Practice Committee was originally established before the attack upon us at Pearl Harbor, and was an integral part of our defense-production program. It has continued since then in one form or another; and has grown steadily in importance. Its work has been based on the principle that the successful prosecution of the war demands the participation of all available workers regardless of race, creed, or color, and that the policy of the United States was to encourage all such persons to full participation in the war effort.

The war is not over. In fact a bitter and deadly conflict lies ahead of us. To abandon at this time the fundamental principle upon which the Fair Employment Practice Committee was established is unthinkable.

Even if the war were over, or nearly over, the question of fair-employment practices during the reconversion period and thereafter would be of paramount importance. Discrimination in the matter of employment against properly qualified persons because of their race, creed, or color is not only un-American in nature, but will lead eventually to industrial strife and unrest. It has a tendency to create substandard conditions of living for a large part of our population. The principle and policy of fair-employment practice should be established permanently as a part of our national law.

I understand that one reason assigned for omitting an appropriation for the present Committee is that a proposal is now before the Congress to establish a permanent and statutory Fair Employment Practice Commission.

The legislation providing for this Commission is now in the Rules Committee.

Unless it is sent to the floor, the Members of the House will have no opportunity to vote upon it. The result will be that on July 1, next, the principle of fair employment practices will have been abandoned by the House of Representatives.

I therefore urge the Rules Committee to adopt a rule permitting this legislation to be voted upon by the Members of the House as quickly as possible.

Very sincerely yours,

HARRY S. TRUMAN.